

report the findings of its survey to the Legislature on or before July 1, 1994.

*As added by AB 1305 (Killea), Stats. 1989, c. 1093, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35.*

#### ARTICLE 4. FALSE CERTIFICATION

(Article 4 as added by SB 937 (Vuich), Stats. 1990, c. 35)

42780. If any person provides a consumer of newsprint with a false or misleading certificate concerning the recycled content of the delivered newsprint pursuant to Section 42772, the board, within 30 days of making this determination, shall refer the false or misleading certificate to the Attorney General for prosecution for fraud.

*As added by AB 1305 (Killea), Stats. 1989, c. 1093, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35.*

42781. If any consumer of newsprint provides the board with a false or misleading certificate concerning the percentage of recycled-content newsprint used pursuant to Section 42770, the board within 30 days of making this determination, shall refer the false or misleading certificate to the Attorney General for prosecution for fraud.

*As added by AB 1305 (Killea), Stats. 1989, c. 1093, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35.*

42782. If any consumer of newsprint provides the board with a false or misleading certificate concerning why the consumer of newsprint was unable to obtain the minimum amounts of recycled-content newsprint pursuant to Section 42773, the board, within 30 days of making this determination, shall refer the false or misleading certificate to the Attorney General for prosecution for fraud.

*As added by AB 1305 (Killea), Stats. 1989, c. 1093, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35.*

42783. Specific information on newsprint prices included as part of a certificate submitted to the board by newsprint consumers or suppliers of newsprint is proprietary information and shall not be made available to the general public.

*As added by AB 1305 (Killea), Stats. 1989, c. 1093, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35.*

#### ARTICLE 5. PENALTIES

(Article 5 as added by SB 937 (Vuich), Stats. 1990, c. 35)

42790. Any person who violates Article 3 (commencing with Section 42770) is guilty of an infraction punishable by a fine of not more than one thousand dollars (\$1,000).

*As added by AB 1305 (Killea), Stats. 1989, c. 1093, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35, and amended by AB 54 (Sher), Stats. 1993, c. 663.*

42791. In addition to Section 42790, any person who violates Article 3 (commencing with Section 42770) may be assessed a civil penalty by the board of not more than one thousand dollars (\$1,000) for each violation, pursuant to notice and hearing. Any civil penalties received pursuant to

this subdivision shall be deposited in a separate account in the fund and, upon appropriation by the Legislature, shall be used by the board for the administration of this division.

*As added by AB 1305 (Killea), Stats. 1989, c. 1093, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35, and amended by AB 2211 (Sher), Stats. 1992, c. 280, and AB 54 (Sher), Stats. 1993, c. 663.*

### Chapter 16. Waste Tires

(Chapter 16 as added by AB 1843 (W. Brown), Stats. 1989, c. 974, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35)

#### ARTICLE 1. DEFINITIONS

(Article 1 as added by AB 1843 (W. Brown), Stats. 1989, c. 974, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35)

42800. The following definitions govern the construction of this chapter.

*As added by AB 1843 (W. Brown), Stats. 1989, c. 974, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35.*

42801. "Agricultural purposes" means the use of waste tires as bumpers on agricultural equipment or as a ballast to maintain covers or structures on an agricultural site.

*As added by AB 1843 (W. Brown), Stats. 1989, c. 974, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35.*

42802. "Fund" means the California Tire Recycling Management Fund created by subdivision (a) of Section 42885.

*As added by AB 1843 (W. Brown), Stats. 1989, c. 974, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35.*

42803. "Local agency" means a county, city, special district, or other local governmental agency which provides or regulates solid waste handling services.

*As added by AB 1843 (W. Brown), Stats. 1989, c. 974, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35.*

42804. "Operator" means the person responsible for the overall operation of a waste tire facility.

*As added by AB 1843 (W. Brown), Stats. 1989, c. 974, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35.*

42805. "Owner" means a person who owns, in whole or in part, a waste tire facility, the waste tires located at a facility, or the land on which a waste tire facility is located.

*As added by AB 1843 (W. Brown), Stats. 1989, c. 974, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35.*

42806. "Tire" means a pneumatic tire or solid tire manufactured for use on any type of motor vehicle.

*As added by AB 1843 (W. Brown), Stats. 1989, c. 974, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35.*

42807. "Waste tire" means a tire that has been removed from the wheel of a vehicle and is no longer

suitable for its original intended purpose due to wear, damage, or defect.

*As added by AB 1843 (W. Brown), Stats. 1989, c. 974, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35.*

42808. "Waste tire facility" means a location, other than a solid waste facility permitted pursuant to this title that receives for transfer or disposal less than 150 tires per day averaged on an annual basis, where, at any time, waste tires are stored, stockpiled, accumulated, or discarded. "Waste tire facility" includes all of the following:

(a) "Existing waste tire facility" means a waste tire facility which is receiving, storing, or accumulating waste tires, or upon which waste tires are discarded, on January 1, 1990.

(b) "Major waste tire facility" means a waste tire facility where, at any time, 5,000 or more waste tires are or will be stored, stockpiled, accumulated, or discarded.

(c) "Minor waste tire facility" means a waste tire facility where, at any time, 500 or more, but less than 5,000, waste tires are or will be stored, stockpiled, accumulated, or discarded. However, a "minor waste tire facility" does not include a tire dealer or an automobile dismantler, as defined in Sections 220 and 221 of the Vehicle Code, who stores tires on the dealer's or dismantler's premises for less than 90 days if not more than 1,500 waste tires are ever accumulated on the dealer's or dismantler's premises.

*As added by AB 1843 (W. Brown), Stats. 1989, c. 974, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35, and amended by AB 2923 (Hauser), Stats. 1992, c. 199.*

## ARTICLE 2. GENERAL PROVISIONS

(Article 2 as added by SB 937 (Vuich), Stats. 1990, c. 35, and repealed and added by AB 1515 (Sher), Stats. 1991, c. 717)

42810. Nothing in this chapter limits the authority of a local agency to regulate persons or businesses that store, stockpile, process, or dispose of waste tires.

*As added by AB 1843 (W. Brown), Stats. 1989, c. 974, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35, and repealed and added by AB 1515 (Sher), Stats. 1991, c. 717.*

42811. The board may delegate specific powers and authority in this chapter to enforcement agencies, as defined in Section 40130, including any of the following:

(a) Review of operation plans submitted pursuant to regulations adopted under subdivision (a) of Section 42821.

(b) Inspection of permitted facilities.

(c) Enforcement of waste tire facility permits.

*As added by AB 1843 (W. Brown), Stats. 1989, c. 974, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35, and repealed and added by AB 1515 (Sher), Stats. 1991, c. 717.*

42812. Division 13 (commencing with Section 21000) of the Public Resources Code does not apply to the issuance of a permit for the operation of an existing waste tire facility pursuant to this chapter, except as to any substantial change in the design or operation of the waste

tire facility made between the time this chapter becomes effective and the permit is initially issued by the board and as to any subsequent substantial changes made in the design or operation of the waste tire facility.

*As added by AB 1843 (W. Brown), Stats. 1989, c. 974, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35, and repealed and added by AB 1515 (Sher), Stats. 1991, c. 717.*

## Sections 42813 to 42817. REPEALED.

*As added by AB 1843 (W. Brown), Stats. 1989, c. 974, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35, and repealed by AB 1515 (Sher), Stats. 1991, c. 717.*

## ARTICLE 3. MAJOR WASTE TIRE FACILITY PERMITS

(Article 3 as added by SB 937 (Vuich), Stats. 1990, c. 35)

42820. (a) On or before July 1, 1991, the board, in consultation with the State Fire Marshal and the Office of Environmental Health Hazard Assessment, shall adopt emergency regulations setting forth the procedures and requirements necessary to obtain a major waste tire facility permit.

(b) Regulations adopted pursuant to subdivision (a) shall not require the issuance of a separate permit to a solid waste disposal facility which is permitted pursuant to Chapter 3 (commencing with Section 44001) of Part 4.

*As added by AB 1843 (W. Brown), Stats. 1989, c. 974, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35, and amended by the Gov. Reorg. Plan No. 1 of 1991.*

42821. The regulations for major waste tire facility permits shall include, but not be limited to, all of the following:

(a) Requirements for submission of a detailed operations plan which contains the following components:

- (1) Fire prevention measures.
- (2) Fencing and other security measures.
- (3) Vector control measures.
- (4) Limits on the size and height of tire piles.
- (5) A closure plan.

(b) Requirements for submission of a detailed plan and implementation schedule for the elimination or substantial reduction of existing tire piles using any of the following methods or techniques:

- (1) Polymer treatment.
- (2) Rubber reclaiming and crumb rubber production.
- (3) Pyrolysis.
- (4) Production of supplemental fuels for cement kilns, lumber operations, or other industrial processes.
- (5) Tire shredding and transportation to an authorized solid waste landfill.

(6) Energy recovery through incineration of whole or shredded tires in accordance with the terms and conditions of a permit issued by an air pollution control district or air quality management district.

(7) Other applications determined to be appropriate by the board.

(c) Requirements for the submission of evidence of financial assurances secured by the operator of the facility that are adequate to cover damage claims arising out of the operation of the facility and that are adequate to cover the cost of closure if that becomes necessary. The financial assurance shall be a trust fund, surety bond, letter of credit, insurance, or other equivalent financial arrangement acceptable to the board.

*As added by AB 1843 (W. Brown), Stats. 1989, c. 974, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35.*

42822. The board shall issue major waste tire facility permits pursuant to the regulations upon application therefor.

*As added by AB 1843 (W. Brown), Stats. 1989, c. 974, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35.*

42823. Except as provided in Section 42823.5, no person shall establish a new major waste tire facility or expand an existing minor waste tire facility unless the person has obtained a major waste tire facility permit issued by the board pursuant to Section 42822.

*As added by AB 1843 (W. Brown), Stats. 1989, c. 974, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35, and amended by AB 1515 (Sher), Stats. 1991, c. 717, and AB 2494 (Sher), Stats. 1992, c. 1292, and AB 3322 (Sher), Stats. 1992, c. 1293, and AB 1071 (Morrow), Stats. 1995, c. 191.*

42823.5. (a) A cement manufacturing plant shall be exempt from the requirement to obtain a permit pursuant to Section 42823 if the operator of the cement manufacturing plant meets both of the following requirements:

(1) The owner or operator of the cement manufacturing plant stores not more than a one-month supply of waste tires at the site of the cement manufacturing plant at any time. A one-month supply of waste tires shall be based on either of the following:

(A) The average monthly consumption of waste tires by the plant during the previous year.

(B) The waste tire percentage of the total fuel supply allowed by the air pollution control district or air quality management district, multiplied by the average monthly consumption of fuel for the previous year.

(2) The operator or owner of the cement manufacturing plant is in compliance with any regulations adopted by the board pertaining to waste tire storage and disposal.

(b) To apply for the exemption provided by this section, the operator or owner of a cement manufacturing plant shall provide all of the following information to the board in writing:

(1) The name, address, and physical location of the plant.

(2) The name, address, and telephone number of the plant operator and owner.

(3) Information describing compliance with division (a).

(4) Signatures of the operator and owner of the plant certifying to the accuracy of the information provided.

(c) If there is any change to the information provided pursuant to subdivision (b), the operator or owner of the cement manufacturing plant shall report the change to the board, in writing, within 30 days from the date of the change.

(d) Within 60 days from the date of the receipt of the information required by subdivision (b), the board shall determine whether the operator or owner of a cement manufacturing plant qualifies for the exemption provided by this section and shall notify the operator or owner of the plant of its determination in writing.

(e) The board or the local enforcement agency may inspect a cement manufacturing plant that receives the exemption provided by this section to determine compliance with this section.

(f) Any operator or owner of a cement manufacturing plant who receives an exemption pursuant to this section shall allow the board, upon presentation of the proper credentials, to enter the cement manufacturing plant during normal working hours to examine and copy books, papers, records, or memoranda pertaining to the use and storage of waste tires, and to conduct inspections and investigations pertaining to waste tire use and storage.

*As added by AB 1071 (Morrow), Stats. 1995, c. 191, and amended by AB 3358 (Ackerman), Stats. 1996, c. 1041.*

42824. On and after September 1, 1994, it is unlawful to direct or transport waste tires to a major waste tire facility or to accept waste tires at a major waste tire facility unless the operator has obtained a major waste tire facility permit.

*As added by AB 1843 (W. Brown), Stats. 1989, c. 974, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35, and amended by AB 1515 (Sher), Stats. 1991, c. 717, and AB 2494 (Sher), Stats. 1992, c. 1292, and AB 3322 (Sher), Stats. 1992, c. 1293.*

42825. Any person who accepts waste tires at a major waste tire facility which has not been issued a permit or knowingly directs or transports waste tires to a major waste tire facility which has not been issued a permit shall, upon conviction, be punished by a fine of not less than one thousand dollars (\$1,000) nor more than ten thousand dollars (\$10,000) for each day of violation, by imprisonment in the county jail for not more than one year, or by both that fine and imprisonment.

*As added by AB 1843 (W. Brown), Stats. 1989, c. 974, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35.*

#### ARTICLE 4. MINOR WASTE TIRE FACILITY PERMITS

(Article 4 as added by SB 937 (Vuich), Stats. 1990, c. 35)

42830. (a) On or before December 1, 1991, the board, in consultation with the State Fire Marshal and the Office of Environmental Health Hazard Assessment, shall adopt emergency regulations setting forth the procedures

and requirements necessary to obtain a minor waste tire facility permit.

(b) Regulations adopted pursuant to subdivision (a) shall not require the issuance of a separate permit to a solid waste disposal facility which is permitted pursuant to Chapter 3 (commencing with Section 44001) of Part 4.

*As added by AB 1843 (W. Brown), Stats. 1989, c. 974, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35, and amended by the Gov. Reorg. Plan No. 1 of 1991.*

42831. The board may exempt either of the following from the permit requirements of this article:

(a) An owner or operator of a tire retreading business for the business site if not more than 3,000 waste tires are kept on the business premises.

(b) A person using waste tires for agricultural purposes if the waste tires are kept on the site of use.

*As added by AB 1843 (W. Brown), Stats. 1989, c. 974, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35.*

42832. The regulations for minor waste tire facility permits shall include, but not be limited to, all of the following:

(a) Fire prevention measures.

(b) Vector control measures.

(c) Other measures determined by the board to be necessary to protect the public health and safety.

*As added by AB 1843 (W. Brown), Stats. 1989, c. 974, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35.*

42833. The board shall issue minor waste tire facility permits pursuant to the regulations upon application therefor.

*As added by AB 1843 (W. Brown), Stats. 1989, c. 974, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35.*

42834. On and after July 1, 1994, it is unlawful to direct or transport waste tires to a minor waste tire facility or to accept waste tires at a minor waste tire facility unless the operator has obtained a minor waste tire facility permit.

*As added by AB 1843 (W. Brown), Stats. 1989, c. 974, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35, and amended by AB 2494 (Sher), Stats. 1992, c. 1292, and AB 3322 (Sher), Stats. 1992, c. 1293.*

42835. Any person who accepts waste tires at a minor waste tire facility which has not been issued a permit or knowingly directs or transports waste tires to a minor waste tire facility which has not been issued a permit shall, upon conviction, be punished by a fine of not less than five hundred dollars (\$500) nor more than five thousand dollars (\$5,000) for each day of violation, by imprisonment in the county jail for not more than one year, or by both that fine and imprisonment.

*As added by AB 1843 (W. Brown), Stats. 1989, c. 974, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35.*

## ARTICLE 5. RENEWAL, SUSPENSION, OR REVOCATION (Article 5 as added by SB 937 (Vuich), Stats. 1990, c. 35)

42840. A waste tire facility permit issued pursuant to this chapter is valid for five years unless suspended or revoked. The permit shall be renewed prior to the expiration thereof.

*As added by AB 1843 (W. Brown), Stats. 1989, c. 974, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35.*

42841. The board may refuse to issue or renew a waste tire facility permit on any grounds for which it may suspend or revoke a permit.

*As added by AB 1843 (W. Brown), Stats. 1989, c. 974, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35.*

42842. The board may deny, suspend, or revoke a waste tire facility permit in accordance with the procedures in this article if the applicant or holder of the permit has done any of the following acts:

(a) Committed any violation of, or failed to comply with any requirement of, this chapter.

(b) Aided, abetted, or permitted any violation of this chapter.

(c) Aided, abetted, or permitted a failure to comply with this chapter if the failure of compliance shows a repeating or recurring pattern or may pose a threat to public health or safety or the environment.

(d) Committed any violation of, or failed to comply with, any order issued by the board relating to the safe storage or processing of waste tires.

(e) Committed any misrepresentation or omission of a significant fact or other required information in the application for a waste tire facility permit.

*As added by AB 1843 (W. Brown), Stats. 1989, c. 974, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35.*

42843. Except as provided in Section 42844, proceedings for the denial, suspension, or revocation of a permit under this chapter shall be conducted in accordance with Chapter 4 (commencing with Section 44300) of Part 4.

*As added by AB 1843 (W. Brown), Stats. 1989, c. 974, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35, and amended by AB 2211 (Sher), Stats. 1992, c. 280.*

42844. (a) The board may temporarily suspend any permit issued pursuant to this chapter prior to any hearing if the board determines that the action is necessary to prevent or mitigate an imminent or substantial endangerment to the public health or safety or the environment.

(b) The board shall notify the holder of the permit of the temporary suspension and the effective date thereof and, at the same time, shall serve the person with an accusation.

(c) Upon receipt by the board of a notice of defense to the accusation from the holder of the permit, the board shall, within 15 days, set the matter for a hearing, which shall be held as soon as possible, but not later than 30 days after receipt of the notice.

(d) The temporary suspension shall remain in effect until the hearing is completed and the board has made a final determination on the merits, which shall be made within 60 days after the completion of the hearing. If the determination is not transmitted within this period, the temporary suspension shall be of no further effect.

*As added by AB 1843 (W. Brown), Stats. 1989, c. 974, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35.*

42845. (a) Any person who stores, stockpiles, or accumulates waste tires at a location for which a waste tire facility permit is required pursuant to this chapter, or in violation of the terms and conditions of the permit, the provisions of this chapter, or the regulations adopted under this chapter, shall, upon order of the board, clean up those waste tires or abate the effects thereof, or, in the case of threatened pollution or nuisance, take other necessary remedial action.

(b) Upon failure of any person to comply with the cleanup or abatement order, the Attorney General, at the request of the board, shall petition the superior court for that county for the issuance of an injunction requiring the person to comply therewith. In any suit, the court shall have jurisdiction to grant a prohibitory or mandatory injunction, either preliminary or permanent, as the facts may warrant.

*As added by AB 1843 (W. Brown), Stats. 1989, c. 974, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35.*

42846. (a) The board may expend available moneys to perform any cleanup, abatement, or remedial work required under the circumstances set forth in Section 42845 which in its judgment is required by the magnitude of endeavor or the need for prompt action to prevent substantial pollution, nuisance, or injury to the public health or safety. The action may be taken in default of, or in addition to, remedial work by the violator or other persons, and regardless of whether injunctive relief is being sought.

(b) The board may perform the work itself, or by or in cooperation with any other governmental agency, and may use rented tools or equipment, either with operators furnished or unoperated. Notwithstanding any other provisions of law, the board may enter into oral contracts for that work, and the contracts, whether written or oral, may include provisions for equipment rental and in addition the furnishing of labor and materials necessary to accomplish the work. The contracts are exempt from approval by the Department of General Services pursuant to Section 10295 of the Public Contract Code.

*As added by AB 1843 (W. Brown), Stats. 1989, c. 974, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35, and amended by AB 1515 (Sher), Stats. 1991, c. 717.*

42847. If waste tires are cleaned up, the effects of the tires abated, or, in the case of threatened pollution or nuisance, other necessary remedial action is taken by any governmental agency, the person or persons who unlawfully stored, stockpiled, or accumulated the waste tires or who

unlawfully permitted the storage, stockpile, or accumulation of waste tires or who threatened to cause or permit the unlawful storage, stockpile, or accumulation of waste tires within the meaning of subdivision (a), shall be liable to that governmental agency to the extent of the reasonable costs actually incurred in cleaning up the waste, abating the effects thereof, or taking other remedial actions. The amount of those costs shall be recoverable in a civil action by, and paid to, the governmental agency and the board to the extent of the latter's contribution to the cleanup costs from available funds.

*As added by AB 1843 (W. Brown), Stats. 1989, c. 974, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35.*

42848. If, despite reasonable efforts by the board to identify the person responsible for the unlawful storage, stockpiling, or accumulation of waste tires or the condition of pollution or nuisance, the person is not identified at the time cleanup, abatement, or remedial work must be performed, the board shall not be required to issue an order under this section.

*As added by AB 1843 (W. Brown), Stats. 1989, c. 974, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35.*

42849. "Threaten" or "threat," for purposes of this article, means a condition creating a substantial probability of harm, when the probability and potential extent of harm make it reasonably necessary to take immediate action to prevent, reduce, or mitigate damages to persons, property, natural resources, or the public health or safety.

*As added by AB 1843 (W. Brown), Stats. 1989, c. 974, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35.*

## ARTICLE 6. ADMINISTRATIVE ENFORCEMENT

(Article 6 as added by SB 937 (Vuich), Stats. 1990, c. 35)

42850. (a) Any person who intentionally or negligently violates any provision of this chapter, or any permit, rule, regulation, standard, or requirement issued or adopted pursuant to this chapter is liable for a civil penalty not to exceed ten thousand dollars (\$10,000) for each violation of a separate provision or, for continuing violations, for each day that the violation continues.

(b) Liability under this section may be imposed in a civil action or liability may be imposed administratively pursuant to this article.

*As added by AB 1843 (W. Brown), Stats. 1989, c. 974, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35, and amended by AB 2211 (Sher), Stats. 1992, c. 280, and AB 2494 (Sher), Stats. 1992, c. 1292, and AB 3322 (Sher), Stats. 1992, c. 1293, and AB 54 (Sher), Stats. 1993, c. 663.*

42851. (a) The board may issue a complaint to any person on whom civil liability may be imposed pursuant to this article. The complaint shall allege the acts or failures to act that constitute a basis for liability and the amount of the proposed civil liability. The complaint shall be served by personal service or certified mail and shall inform the party



so served that a hearing shall be conducted within 60 days after the party has been served, unless the party waives the right to a hearing.

(b) If the party waives the right to a hearing, the board shall issue an order setting liability in the amount proposed in the complaint unless the board and the party have entered into a settlement agreement, in which case the board shall issue an order setting liability in the amount specified in the settlement agreement. If the party has waived the right to a hearing or if the board and the party have entered into a settlement agreement, the order shall not be subject to review by any court or agency.

*As added by AB 1843 (W. Brown), Stats. 1989, c. 974, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35.*

42852. (a) Any hearing required under this section shall be conducted by an independent hearing officer according to the procedures specified in Sections 11507 to 11517, inclusive, of the Government Code, except as otherwise specified in this section. In making a determination, the hearing officer shall take into consideration the nature, circumstances, extent, and gravity of the violation, the violator's past and present efforts to prevent, abate, or clean up conditions posing a threat to the public health or safety or the environment, the violator's ability to pay the proposed civil penalty, and the prophylactic effect that imposition of the proposed penalty will have on both the violator and on the regulated community as a whole.

(b) After conducting any hearing required under this section, the hearing officer shall, within 30 days after the case is submitted, issue a decision, including an order setting the amount of civil penalty to be imposed, if any.

*As added by AB 1843 (W. Brown), Stats. 1989, c. 974, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35.*

42853. Orders setting civil liability issued under this section shall become effective and final upon issuance thereof, and payment shall be made within 30 days of issuance. Copies of these orders shall be served by personal service or by certified mail upon the party served with the complaint and upon other persons who appeared at the hearing and requested a copy.

*As added by AB 1843 (W. Brown), Stats. 1989, c. 974, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35.*

42854. (a) Within 30 days after service of a copy of a decision issued by the hearing officer, any person so served may file with the superior court a petition for writ of mandate for review of the decision. Any person who fails to file the petition within the 30-day period may not challenge the reasonableness or validity of a decision or order of the hearing officer in any judicial proceedings brought to enforce the decision or order or for other remedies.

(b) Except as otherwise provided in this section, Section 1094.5 of the Code of Civil Procedure governs any proceedings conducted pursuant to this subdivision. In all

proceedings pursuant to this subdivision, the court shall uphold the decision of the hearing officer if the decision is based upon substantial evidence in the whole record.

(c) The filing of a petition for writ of mandate does not stay any corrective action required pursuant to this chapter or the accrual of any penalties assessed pursuant to this chapter.

(d) This section does not prohibit the court from granting any appropriate relief within its jurisdiction.

*As added by AB 1843 (W. Brown), Stats. 1989, c. 974, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35.*

42855. All penalties collected under Section 42850 shall be deposited in the California Tire Recycling Management Fund created pursuant to Section 42885.

*As added by AB 1843 (W. Brown), Stats. 1989, c. 974, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35.*

#### ARTICLE 7. WASTE TIRES TO ENERGY (REPEALED)

(Article 7 as added by SB 937 (Vuich), Stats. 1990, c. 35, and repealed by AB 626 (Sher), Stats. 1996, c. 1038)

#### 42859. REPEALED.

*As added by AB 1843 (W. Brown), Stats. 1989, c. 974, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35, and repealed by AB 626 (Sher), Stats. 1996, c. 1038.*

### Chapter 17. California Tire Recycling Act

(Chapter 17 as added by SB 937 (Vuich), Stats. 1990, c. 35)

#### ARTICLE 1. FINDINGS

(Article 1 as added by SB 937 (Vuich), Stats. 1990, c. 35)

42860. This chapter shall be known and may be cited as the California Tire Recycling Act.

*As added by AB 1843 (W. Brown), Stats. 1989, c. 974, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35.*

42861. The Legislature finds and declares the following:

(a) The problem posed by used tire storage and disposal requires a comprehensive, statewide response, including, but not limited to, reducing landfill disposal of used whole tires, recycling of tires into secondary uses, source material development and promotion of secondary markets for used tire byproducts, tire shredding, and energy recovery.

(b) California is currently faced with an existing used tire inventory of at least 100 million tires, an amount which grows by over 20 million tires per year. Without a dedication of resources to address the state's growing tire population, the health and safety of all Californians will be increasingly at risk.

(c) There are currently no dedicated resources for the recycling of used tires, or a comprehensive tire shredding program. Therefore, the levying of a fee on the disposal of used whole tires in the state is needed to support tire recycling activities.

to abate or correct the violation or violations, in a reasonable time.

(c) The functionally equivalent provisions of tribal or federal permits, as determined sufficient pursuant to Section 44205, together with any cooperative agreement approved pursuant to this article, shall collectively be deemed to constitute permits issued under state law for all purposes of enforcing state law.

(d) Notwithstanding subdivision (b), each of the public agencies specified in subdivision (b) of Section 44203 may immediately exercise its enforcement powers over any solid waste facility project on Indian country where a cooperative agreement has been executed, if, in the judgment of the public agency, immediate state action is required to avoid an imminent and substantial threat to public health and safety or to the environment. The state shall notify the tribe prior to taking any action pursuant to this subdivision.

*As added by AB 240 (Peace), Stats. 1991, c. 805, and amended by AB 2618 (Peace), Stats. 1992, c. 113.*

44207. (a) The cooperative agreement shall provide that the state or tribe may bring an appropriate civil action in a court of competent jurisdiction to enforce the terms of the cooperative agreement as a contract, and shall not limit the availability to either party of any remedy at law or in equity otherwise available under California law.

(b) The cooperative agreement shall require that the state waive its sovereign immunity from any action brought by the state in any court otherwise having jurisdiction over the subject matter, and that the state shall waive its sovereign immunity from any action brought by the tribe, in any court otherwise having jurisdiction over the subject matter, to enforce the terms of the cooperative agreement.

*As added by AB 240 (Peace), Stats. 1991, c. 805.*

44208. A cooperative agreement executed pursuant to this article shall be executed for the express benefit of the citizens of this state.

*As added by AB 240 (Peace), Stats. 1991, c. 805.*

44209. Any person may commence a civil action on the person's own behalf against any of the public agencies specified in subdivision (b) of Section 44203, or against the secretary, who is alleged to have approved or certified the sufficiency of any cooperative agreement or permit in violation of this article. No action may be commenced under this section more than 60 days after the agency or secretary has approved or certified the sufficiency of any cooperative agreement or permit under this article.

*As added by AB 240 (Peace), Stats. 1991, c. 805.*

44210. Notwithstanding this article, a composting facility located in Indian country with a memorandum of agreement adopted November 29, 1989, with the California Regional Water Quality Control Board, Colorado River Basin Region 7, shall be allowed to continue to operate under the terms of that agreement until January 1, 1993, or

the date the project complies with this article, whichever date is earlier.

*As added by AB 240 (Peace), Stats. 1991, c. 805.*

## Chapter 4. Denial, Suspension or Revocation of Permits

(Chapter 4 as added by AB 939 (Sher), Stats. 1989, c. 1095, and repealed and added by AB 59 (Sher), Stats. 1995, c. 952)

### ARTICLE 1. DENIAL OF PERMITS

(Article 1 as added by AB 939 (Sher), Stats. 1989, c. 1095, and repealed and added by AB 59 (Sher), Stats. 1995, c. 952)

44300. An enforcement agency may, after holding a public hearing in accordance with the procedures set forth in Section 44310, deny a solid waste facilities permit in any of the following cases:

(a) The application is incomplete or otherwise inadequate.

(b) The applicant has not complied with Division 13 (commencing with Section 21000).

(c) The applicant has failed to demonstrate that the facility will meet minimum regulatory standards.

(d) The application contains significant false or misleading information or significant misrepresentations.

(e) The agency determines the applicant has, during the previous three years, been convicted of, or been issued a final order for, one or more violations of this division, or the terms and conditions of the permit, and the violation meets both of the following criteria:

(1) The violation demonstrates a chronic recurring pattern of noncompliance which has posed, or may pose, a significant risk to public health and safety or to the environment.

(2) The violation has not been corrected or reasonable progress toward correction has not been achieved.

*As added by AB 939 (Sher), Stats. 1989, c. 1095, and repealed and added by AB 59 (Sher), Stats. 1995, c. 952.*

### 44301. REPEALED.

*As added by AB 939 (Sher), Stats. 1989, c. 1095, and repealed by AB 59 (Sher), Stats. 1995, c. 952.*

### ARTICLE 2. SUSPENSION OR REVOCATION

(Article 2 as added by AB 939 (Sher), Stats. 1989, c. 1095, and repealed and added by AB 59 (Sher), Stats. 1995, c. 952)

44305. (a) An enforcement agency may, after holding a public hearing in accordance with the procedures set forth in Section 44310, temporarily suspend a solid waste facilities permit if the enforcement agency determines that changed conditions at the facility necessitate a permit revision or modification to eliminate a significant threat to public health and safety or to the environment.

(b) Notwithstanding subdivision (a), the enforcement agency may suspend a solid waste facilities permit prior to holding a hearing if the enforcement agency determines that

changed conditions at the facility necessitate a permit revision or modification to prevent or mitigate an imminent and substantial threat to the public health and safety or to the environment. However, any person aggrieved by an action by an enforcement agency to suspend a permit pursuant to this subdivision may appeal the action to a hearing panel established pursuant to Section 44308 or 44309. The hearing panel shall, at the request of the aggrieved party, hear the appeal within three business days of the date when the permit was suspended, or the first day thereafter requested by the aggrieved party in compliance with Chapter 9 (commencing with Section 54950) of Division 2 of Title 5 of the Government Code. The hearing panel shall render its decision on the day the hearing concludes. The panel may affirm, modify, or rescind the permit suspension. Any decision of a hearing panel established pursuant to Section 44308 may be appealed pursuant to Section 45030.

(c) The enforcement agency shall lift the permit suspension as soon as the changed conditions that necessitated the suspension pursuant to subdivision (b) have been corrected.

*As added by AB 59 (Sher). Stats. 1995, c. 952.*

44306. The enforcement agency may, after holding a hearing in accordance with the procedures set forth in Section 44310, revoke a solid waste facilities permit if the enforcement agency determines any of the following:

(a) The permit was obtained by a material misrepresentation or failure to disclose relevant factual information.

(b) The operator has, during the previous three years, been convicted of, or been issued a final order for, one or more violations of this division, regulations adopted pursuant to this division, or the terms and conditions of the permit, and the violation meets both of the following criteria:

(1) The violation demonstrates a chronic recurring pattern of noncompliance which has posed, or may pose, a significant risk to public health and safety or to the environment.

(2) The violation has not been corrected or reasonable progress toward correction has not been achieved.

*As added by AB 59 (Sher). Stats. 1995, c. 952.*

44307. From the date of issuance of a permit that imposes conditions that are inappropriate, as contended by the applicant, or after the taking of any enforcement action pursuant to Part 5 (commencing with Section 45000) by the enforcement agency, the enforcement agency shall hold a hearing, if requested to do so, by the person subject to the action, in accordance with the requirements set forth in Section 44310. The enforcement agency shall also hold a hearing upon a petition to the enforcement agency

requesting the enforcement agency to review an alleged failure of the agency to act as required by law or regulation.

*As added by AB 59 (Sher). Stats. 1995, c. 952.*

44308. (a) All hearings conducted pursuant to this chapter by the enforcement agency shall be conducted by a hearing panel appointed pursuant to either of the following procedures:

(1) The governing body may appoint three of its members as the hearing panel.

(2) The chairperson of the governing body may appoint an independent hearing panel consisting of three members.

(b) (1) If an independent hearing panel is appointed pursuant to paragraph (2) of subdivision (a), not more than one member of the governing body shall serve on the hearing panel.

(2) Members of the independent hearing panel shall be selected for their legal, administrative, or technical abilities in areas relating to solid waste management.

(3) At least one member of the independent hearing panel shall be a technical expert with knowledge of solid waste management methods and technology.

(4) At least one member of the independent hearing panel shall be a representative of the public at large.

(5) A member of an independent hearing panel shall serve for a term of two years, and may not serve more than two consecutive terms.

(6) If a member of an independent hearing panel does not complete the member's term, the chairperson of the governing body shall appoint a replacement to serve out the remainder of the unexpired term.

(c) Members of the hearing panel may receive per diem and necessary expenses while conducting the hearing.

*As added by AB 59 (Sher). Stats. 1995, c. 952.*

44309. All hearings conducted by the board pursuant to this chapter, acting as, or on behalf of, the enforcement agency, shall be conducted by a hearing panel of three board members selected by the chairperson of the board.

*As added by AB 59 (Sher). Stats. 1995, c. 952.*

44310. All hearings conducted pursuant to this chapter shall be based on the following procedures:

(a) (1) The hearing shall be initiated by the filing of a request for a hearing by the person subject to the action within 15 days from the date that person is notified, in writing, of the enforcement agency's intent to act in the manner specified.

(2) The enforcement agency shall, within 15 days from the date of receipt of a request for a hearing, provide written notice to the person filing the request notifying the person of the date, time, and place of the hearing, and requiring the person to provide the enforcement agency with a statement of the issues that require a hearing, at least 20 days prior to the date of the hearing.



(3) If that person fails to request a hearing or to timely file a statement of issues, the enforcement agency may take the proposed action without a hearing or may, at its discretion, proceed with a hearing before taking the proposed action.

(b) The hearing shall be held on the merits of the issues presented, in accordance with the procedures specified in Sections 11507 to 11517, inclusive, of the Government Code.

(c) Within 30 days from the date of the hearing, the hearing panel shall issue its decision. The decision shall become effective as provided in Section 45017.

*As added by AB 59 (Sher), Stats. 1995, c. 952.*

#### 44500-44507. REPEALED.

*As added by AB 939 (Sher), Stats. 1989, c. 1095, and repealed by AB 59 (Sher), Stats. 1995, c. 952.*

#### ARTICLE 3. HEARINGS (REPEALED)

(Article 3 as added by AB 939 (Sher), Stats. 1989, c. 1095, and repealed by AB 59 (Sher), Stats. 1995, c. 952)

#### 44800. REPEALED.

*As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 3992 (Sher), Stats. 1990, c. 1355, and AB 1515 (Sher), Stats. 1991, c. 717, and repealed by AB 59 (Sher), Stats. 1995, c. 952.*

#### 44800.5. REPEALED.

*As added by AB 1515 (Sher), Stats. 1991, c. 717, and amended by AB 54 (Sher), Stats. 1993, c. 663, and repealed by AB 59 (Sher), Stats. 1995, c. 952.*

#### 44801-44817. REPEALED.

*As added by AB 939 (Sher), Stats. 1989, c. 1095, and repealed by AB 59 (Sher), Stats. 1995, c. 952.*

### Chapter 5. Asbestos Containing Waste

(Chapter 5 as added by AB 688 (Sher), Stats. 1994, c. 1227)

44820. Except as provided in subdivision (c), the board shall adopt, by regulation, a permitting, inspection, and enforcement program for the disposal of asbestos containing waste, as specified in Section 25143.7 of the Health and Safety Code, at any solid waste facility or disposal site subject to regulation pursuant to this part. The program may include, but is not limited to, standards and certification requirements for local enforcement agencies, pursuant to which the board may delegate authority for the regulation of asbestos containing waste to local enforcement agencies.

(b) On or before March 1, 1995, or the earliest feasible date thereafter, the board and the Department of Toxic Substances Control shall enter into a memorandum of understanding that defines the enforcement responsibilities of each agency for the disposal of asbestos containing waste at any solid waste disposal facility or disposal site subject to regulation pursuant to this part. The memorandum of understanding shall be periodically updated to be consistent with each agency's responsibilities pursuant to this section

and Chapter 6.5 (commencing with Section 25100) of Division 30 of the Health and Safety Code.

(c) Until the board has adopted regulations pursuant to subdivision (a), the Department of Toxic Substances Control shall regulate asbestos containing waste at a solid waste facility or disposal site.

(d) Any regulations adopted pursuant to this section shall be deemed emergency regulations and shall be adopted in accordance with the Administrative Procedures Act (Chapter 3.5 (commencing with Section 11340) of Division 3 of Title 2 of the Government Code.) The adoption of these regulations shall be deemed to be necessary for the immediate preservation of the public peace, health, safety, or general welfare.

*As added by AB 688 (Sher), Stats. 1994, c. 1227.*

## PART 5. ENFORCEMENT

(Part 5 as added by AB 939 (Sher), Stats. 1989, c. 1095, and repealed and added by AB 59 (Sher), Stats. 1995, c. 952)

### Chapter 1. Administrative Enforcement

(Chapter 1 as added by AB 939 (Sher), Stats. 1989, c. 1095, and renumbered from Chapter 10 by AB 3992, Stats. 1990, c. 1355 and repealed and added by AB 59 (Sher), Stats. 1995, c. 952)

#### ARTICLE 1. CORRECTIVE ACTION ORDERS

(Article 1 as added by AB 939 (Sher), Stats. 1989, c. 1095, and repealed and added by AB 59 (Sher), Stats. 1995, c. 952)

45000. (a) Except as provided in subdivision (b), the enforcement agency may issue an administrative order requiring the owner or operator of a solid waste facility to take corrective action as necessary to abate a nuisance, or to protect human health and safety or the environment.

(b) An administrative order shall not be issued for any minor violation which is corrected immediately in the presence of the inspector. Immediate compliance in that manner shall be noted in the inspection report.

(c) The enforcement agency or the board may contract for corrective action after an order issued pursuant to subdivision (a) becomes final and the owner or operator fails to comply with the order by the date specified in the order.

(d) If a enforcement agency or the board expends any funds pursuant to subdivision (b), the owner or operator of the solid waste facility shall reimburse the enforcement agency or the board for the amount expended, including, but not limited to, a reasonable amount for contract administration, and an amount equal to the interest that would have been earned on the expended funds. The amount expended shall be recoverable in a civil action by the Attorney General, upon request of the local enforcement agency or the board.

(e) Any contract for corrective action entered into by the board is exempt from approval by the Department of

## HISTORY

1. New section filed 2-10-92 as an emergency; operative 2-10-92 (Register 92, No. 21). A Certificate of Compliance must be transmitted to OAL 6-9-92 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5-29-92 as an emergency; operative 6-8-92 (Register 92, No. 25). A Certificate of Compliance must be transmitted to OAL by 10-6-92 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 9-28-92 as an emergency; operative 10-6-92 (Register 92, No. 40). A Certificate of Compliance must be transmitted to OAL by 2-3-92 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 1-25-93 as an emergency; operative 2-2-93 (Register 93, No. 5). A Certificate of Compliance must be transmitted to OAL 6-2-93 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1-25-93 order transmitted to OAL 5-26-93; disapproved by OAL on 6-22-93 (Register 93, No. 26).
6. New section filed 6-22-93 as an emergency; operative 6-22-93 (Register 93, No. 26). A Certificate of Compliance must be transmitted to OAL 10-20-93 or emergency language will be repealed by operation of law on the following day.
7. Editorial correction of HISTORY 4 (Register 93, No. 26).
8. Certificate of Compliance as to 6-22-93 emergency order including repealer of section transmitted to OAL 9-23-93 and filed 11-3-93 (Register 93, No. 45).

## § 18447. Retention of Records.

Copies of all records required to be kept under this Chapter shall be retained by the operator for five (5) years and shall be made available at the site during the normal business hours of the operator for inspection and photocopy by any representative of the Board or any individual authorized by the Board.

NOTE: Authority cited: Sections 40502, 42820 and 42830, Public Resources Code. Reference: Sections 42820, 42821, 42830 and 43832, Public Resources Code.

## HISTORY

1. New section filed 2-10-92 as an emergency; operative 2-10-92 (Register 92, No. 21). A Certificate of Compliance must be transmitted to OAL 6-9-92 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5-29-92 as an emergency; operative 6-8-92 (Register 92, No. 25). A Certificate of Compliance must be transmitted to OAL by 10-6-92 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 9-28-92 as an emergency; operative 10-6-92 (Register 92, No. 40). A Certificate of Compliance must be transmitted to OAL by 2-3-92 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 1-25-93 as an emergency; operative 2-2-93 (Register 93, No. 5). A Certificate of Compliance must be transmitted to OAL 6-2-93 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1-25-93 order transmitted to OAL 5-26-93; disapproved by OAL on 6-22-93 (Register 93, No. 26).
6. New section filed 6-22-93 as an emergency; operative 6-22-93 (Register 93, No. 26). A Certificate of Compliance must be transmitted to OAL 10-20-93 or emergency language will be repealed by operation of law on the following day.
7. Editorial correction of HISTORY 4 (Register 93, No. 26).
8. Certificate of Compliance as to 6-22-93 emergency order including amendments transmitted to OAL 9-23-93 and filed 11-3-93 (Register 93, No. 45).

## § 18448. Certification of Records.

(a) All records, summaries or reports submitted to the Board as required by this Chapter shall be signed by a person responsible for preparing and reviewing such documents as part of his or her duties in the regular course of business.

(b) Any person signing a document submitted under this Chapter shall make the following certification:

I certify that this document and all attachments were prepared under my direction or supervision. I have inquired of the person or persons who manage the system or those persons directly responsible for gathering the information, and certify that the information submitted is, to the best of my knowledge and belief, true, accurate, and complete.

NOTE: Authority cited: Sections 40502, 42820 and 42830, Public Resources Code. Reference: Sections 42820, 42821, 42830 and 42832, Public Resources Code.

## HISTORY

1. New section filed 2-10-92 as an emergency; operative 2-10-92 (Register 92, No. 21). A Certificate of Compliance must be transmitted to OAL 6-9-92 or emergency language will be repealed by operation of law on the following day.
2. New section, with amendments to CTWMB 154, refiled 5-29-92 as an emergency; operative 6-8-92 (Register 92, No. 25). A Certificate of Compliance must be transmitted to OAL by 10-6-92 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 9-28-92 as an emergency; operative 10-6-92 (Register 92, No. 40). A Certificate of Compliance must be transmitted to OAL by 2-3-92 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 1-25-93 as an emergency; operative 2-2-93 (Register 93, No. 5). A Certificate of Compliance must be transmitted to OAL 6-2-93 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1-25-93 order transmitted to OAL 5-26-93; disapproved by OAL on 6-22-93 (Register 93, No. 26).
6. New section filed 6-22-93 as an emergency; operative 6-22-93 (Register 93, No. 26). A Certificate of Compliance must be transmitted to OAL 10-20-93 or emergency language will be repealed by operation of law on the following day.
7. Editorial correction of HISTORY 4 (Register 93, No. 26).
8. Certificate of Compliance as to 6-22-93 emergency order including amendments of subsection (a) and repealer and adoption of forms transmitted to OAL 9-23-93 and filed 11-3-93 (Register 93, No. 45).
9. Change without regulatory effect moving forms to section 18831, appendix A filed 4-2-96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 14).

## Article 8.5. Waste Tire Hauler Registration

## § 18449. Scope.

(a) This article requires a registration program and a manifest system for waste tire haulers.

(b) In addition to the regulations in this article, statutory provisions contained in Sections 42950 through 42967 of the Public Resources Code (PRC) govern the Waste Tire Hauler Registration Program.

NOTE: Authority cited: Sections 40502, 42966 and 43020, Public Resources Code. Reference: Section 42950 et seq., Public Resources Code.

## HISTORY

1. New Article 8.5 (sections 18449-18462.2) and section filed 1-18-95 as an emergency; operative 1-18-95 (Register 95, No. 3). A Certificate of Compliance must be transmitted to OAL by 5-17-95 or emergency language will be repealed by operation of law on the following day.
2. New article 8.5 and section refiled 5-18-95 as an emergency; operative 5-18-95 (Register 95, No. 20). A Certificate of Compliance must be transmitted to OAL by 9-15-95 or emergency language will be repealed by operation of law on the following day.
3. New article 8.5 and section refiled 8-21-95 as an emergency; operative 8-21-95 (Register 95, No. 34). A Certificate of Compliance must be transmitted to OAL by 12-19-95 or emergency language will be repealed by operation of law on the following day.
4. New article 8.5 and section refiled 11-28-95 as an emergency; operative 11-28-95 (Register 95, No. 48). A Certificate of Compliance must be transmitted to OAL by 3-27-96 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1-18-95 order including repealer and new section heading, and amendment of section transmitted to OAL 3-29-96 and filed 5-9-96 (Register 96, No. 19).

## § 18450. Purpose and Definitions.

(a) These regulations provide guidance to those who must comply with the Waste Tire Hauler Registration Program requirements. These regulations include a description of the procedures that must be followed for registration application and manifest system requirements, including reporting and documentation requirements.

(b) Definitions.

The following definitions, as well as definitions found in Public Resources Code Sections 42950-42967, apply to the regulations in Chapter 6, Article 8.5.

(1) "Agricultural Purposes" means the use of waste tires as bumpers on agricultural equipment or as a ballast to maintain covers or structures at an agricultural site.

(2) "Applicant" means any person as defined herein seeking to register as a waste tire hauler.

7. Editorial correction of HISTORY 4 (Register 93, No. 26).

8. Certificate of Compliance as to 6-22-93 emergency order including amendments transmitted to OAL 9-23-93 and filed 11-3-93 (Register 93, No. 45).

#### § 18441. Closure Conditions.

(a) In closing the waste tire facility, the operator shall:

(1) Close public access to the waste tire facility;

(2) Post a notice at the entrance indicating to the public that the site is closed and the location of a site where waste tires can be deposited;

(3) Remove all waste tires and tire residues to a destination facility(s) approved by the Board in the Closure Plan. Board approval of destination facilities, within the state, shall be based on the following criteria:

(A) Destination facilities eligible for approval by the Board shall use one or more of the methods delineated in Public Resources Code section 42821(b). If waste tires are transported first to a collection facility, documentation shall be provided to the Board by the operator of the closing facility that the waste tires shall be transported from the collection facility to a destination facility approved by the Board within 90 days of receipt of each shipment of waste tires from the closing facility.

(B) Subsequent to the date specified in Public Resources Code section 42824, any collection or destination facility shall meet the requirements of subsection (A), in addition to the following criteria:

(i) the facility is a solid waste facility permitted in accordance with section 18420(a) of Article 1; or

(ii) the facility is a major or minor waste tire facility permitted under this Chapter; or

(iii) the facility meets at least one of the requirements of section 18420(a)(2)-(5) of Article 1 and it meets the requirements of section 18420(d) of Article 1.

(4) Remove any debris to a recycling facility or a permitted solid waste disposal site; and

(5) Notify the Board when the closure activities are completed and the site is ready for inspection, and furnish the Board with trucking receipts or other documentation that tires and tire residues have been removed from the site and disposed of properly.

(b) After receiving notification that site closure is complete, the Board may inspect the site. If all procedures have been completed in accordance with these regulations, and the waste tires have been transported to an approved destination facility if the waste tires were first transported to a collection facility as specified in section 18441(a) of this Article, the Board shall approve the closure of a major waste tire facility in writing.

NOTE: Authority cited: Sections 40502, 42820 and 42830, Public Resources Code. Reference: Sections 42821 and 42832, Public Resources Code.

#### HISTORY

1. New section filed 2-10-92 as an emergency; operative 2-10-92 (Register 92, No. 21). A Certificate of Compliance must be transmitted to OAL 6-9-92 or emergency language will be repealed by operation of law on the following day.

2. New section refiled 5-29-92 as an emergency; operative 6-8-92 (Register 92, No. 25). A Certificate of Compliance must be transmitted to OAL by 10-6-92 or emergency language will be repealed by operation of law on the following day.

3. New section refiled 9-28-92 as an emergency; operative 10-6-92 (Register 92, No. 40). A Certificate of Compliance must be transmitted to OAL by 2-3-92 or emergency language will be repealed by operation of law on the following day.

4. New section refiled 1-25-93 as an emergency; operative 2-2-93 (Register 93, No. 5). A Certificate of Compliance must be transmitted to OAL 6-2-93 or emergency language will be repealed by operation of law on the following day.

5. Certificate of Compliance as to 1-25-93 order transmitted to OAL 5-26-93; disapproved by OAL on 6-22-93 (Register 93, No. 26).

6. New section filed 6-22-93 as an emergency; operative 6-22-93 (Register 93, No. 26). A Certificate of Compliance must be transmitted to OAL 10-20-93 or emergency language will be repealed by operation of law on the following day.

7. Editorial correction of HISTORY 4 (Register 93, No. 26).

8. Certificate of Compliance as to 6-22-93 emergency order including amendments transmitted to OAL 9-23-93 and filed 11-3-93 (Register 93, No. 45).

#### § 18442. Closure Plan.

(a) The operator of a major waste tire facility shall submit as part of the application package a completed "Closure Plan", Form CTWMB 504 (10/92).

(b) The operator of a major waste tire facility closing under this Article shall submit and update Closure Plan (Part B), Form CTWMB 504 (10/92) to the Board for approval as specified in Section 18440(b) of this Article.

NOTE: Authority cited: Sections 40502, 42820 and 42830, Public Resources Code. Reference: Sections 42821 and 42832, Public Resources Code.

#### HISTORY

1. New section filed 11-3-93; operative 11-3-93 (Register 93, No. 45).

### Article 7. Inspection of Waste Tire Facilities

#### § 18443. Inspection.

(a) The Board and/or the Enforcement Agency (EA) for the jurisdiction in which the waste tire facility is located shall inspect waste tire facilities for compliance with the terms and conditions specified in the waste tire facility permit.

(b) Prior to the initial issuance, renewal or revision of a major or minor waste tire facility permit the Board and the EA shall inspect the facility. After the issuance of a permit, a major waste tire facility shall be inspected by the EA at least once annually. Minor waste tire facilities shall be inspected at least once every two and a half years.

(c) Reports of inspections conducted by the EA shall be submitted to the Board within 30 days of the date of inspection. If the inspection identifies a violation of the permit that is an endangerment to public health, safety or the environment, the EA shall file an inspection report within 7 days of the inspection.

(d) Upon presentation of proper credentials, the Board or an authorized Board employee or agent, shall be allowed to enter the permitted facility during normal working hours to examine and copy books, papers, records, or memoranda pertaining to the facility, and to conduct inspections and investigations pertaining to the facility.

NOTE: Authority cited: Sections 40502, 42820, 42821, 42830 and 42832, Public Resources Code. Reference: Sections 42811, 42820 and 42830, Public Resources Code.

#### HISTORY

1. New section filed 2-10-92 as an emergency; operative 2-10-92 (Register 92, No. 21). A Certificate of Compliance must be transmitted to OAL 6-9-92 or emergency language will be repealed by operation of law on the following day.

2. New section refiled 5-29-92 as an emergency; operative 6-8-92 (Register 92, No. 25). A Certificate of Compliance must be transmitted to OAL by 10-6-92 or emergency language will be repealed by operation of law on the following day.

3. New section refiled 9-28-92 as an emergency; operative 10-6-92 (Register 92, No. 40). A Certificate of Compliance must be transmitted to OAL by 2-3-92 or emergency language will be repealed by operation of law on the following day.

4. Editorial correction reinserting article 7 heading (Register 92, No. 40).

5. New section refiled 1-25-93 as an emergency; operative 2-2-93 (Register 93, No. 5). A Certificate of Compliance must be transmitted to OAL 6-2-93 or emergency language will be repealed by operation of law on the following day.

6. Certificate of Compliance as to 1-25-93 order transmitted to OAL 5-26-93; disapproved by OAL on 6-22-93 (Register 93, No. 26).

7. New section filed 6-22-93 as an emergency; operative 6-22-93 (Register 93, No. 26). A Certificate of Compliance must be transmitted to OAL 10-20-93 or emergency language will be repealed by operation of law on the following day.

8. Editorial correction of HISTORY 5 (Register 93, No. 26).

9. Certificate of Compliance as to 6-22-93 emergency order including amendments transmitted to OAL 9-23-93 and filed 11-3-93 (Register 93, No. 45).

### Article 8. Records

#### § 18445. Record Keeping.

NOTE: Authority cited: Sections 40502, 42820 and 42830, Public Resources Code. Reference: Sections 42820 and 42830, Public Resources Code.

(b) The operator of the facility shall immediately notify the Board in the event of a fire or other emergency if that emergency has potential significant off-site effects. Within 30 days of any such emergency, the operator shall submit to the Board a written report describing the cause(s) of the emergency, the failure of these actions.

NOTE: Authority cited: Sections 40502, 42820 and 42830, Public Resources Code. Reference: Sections 42821 and 42832, Public Resources Code.

#### HISTORY

1. New section filed 2-10-92 as an emergency; operative 2-10-92 (Register 92, No. 21). A Certificate of Compliance must be transmitted to OAL 6-9-92 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5-29-92 as an emergency; operative 6-8-92 (Register 92, No. 25). A Certificate of Compliance must be transmitted to OAL by 10-6-92 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 9-28-92 as an emergency; operative 10-6-92 (Register 92, No. 40). A Certificate of Compliance must be transmitted to OAL by 2-3-92 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 1-25-93 as an emergency; operative 2-2-93 (Register 93, No. 5). A Certificate of Compliance must be transmitted to OAL 6-2-93 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1-25-93 order transmitted to OAL 5-26-93; disapproved by OAL on 6-22-93 (Register 93, No. 26).
6. New section filed 6-22-93 as an emergency; operative 6-22-93 (Register 93, No. 26). A Certificate of Compliance must be transmitted to OAL 10-20-93 or emergency language will be repealed by operation of law on the following day.
7. Editorial correction of HISTORY 4 (Register 93, No. 26).
8. Certificate of Compliance as to 6-22-93 emergency order including repealer and adoption of section transmitted to OAL 9-23-93 and filed 11-3-93 (Register 93, No. 45).
9. Change without regulatory effect amending subsection (a) filed 4-2-96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 14).

#### § 18434. Reduction/Elimination Plan.

(a) The operator of a major waste tire facility shall submit a detailed plan and implementation schedule for the elimination or substantial reduction of existing tire piles pursuant to Public Resources Code section 42821(b).

NOTE: Authority cited: Sections 40502, 42820 and 42830, Public Resources Code. Reference: Section 42821, Public Resources Code.

#### HISTORY

1. New section filed 2-10-92 as an emergency; operative 2-10-92 (Register 92, No. 21). A Certificate of Compliance must be transmitted to OAL 6-9-92 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5-29-92 as an emergency; operative 6-8-92 (Register 92, No. 25). A Certificate of Compliance must be transmitted to OAL by 10-6-92 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 9-28-92 as an emergency; operative 10-6-92 (Register 92, No. 40). A Certificate of Compliance must be transmitted to OAL by 2-3-92 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 1-25-93 as an emergency; operative 2-2-93 (Register 93, No. 5). A Certificate of Compliance must be transmitted to OAL 6-2-93 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1-25-93 order transmitted to OAL 5-26-93; disapproved by OAL on 6-22-93 (Register 93, No. 26).
6. New section filed 6-22-93 as an emergency; operative 6-22-93 (Register 93, No. 26). A Certificate of Compliance must be transmitted to OAL 10-20-93 or emergency language will be repealed by operation of law on the following day.
7. Editorial correction of HISTORY 4 (Register 93, No. 26).
8. Certificate of Compliance as to 6-22-93 emergency order including repealer and adoption of section transmitted to OAL 9-23-93 and filed 11-3-93 (Register 93, No. 45).

#### § 18435. Closure Plan.

NOTE: Authority cited: Sections 40502, 42820 and 42830, Public Resources Code. Reference: Sections 42821 and 42832, Public Resources Code.

#### HISTORY

1. New section filed 2-10-92 as an emergency; operative 2-10-92 (Register 92, No. 21). A Certificate of Compliance must be transmitted to OAL 6-9-92 or emergency language will be repealed by operation of law on the following day.

2. New section refiled 5-29-92 as an emergency; operative 6-8-92 (Register 92, No. 25). A Certificate of Compliance must be transmitted to OAL by 10-6-92 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 9-28-92 as an emergency; operative 10-6-92 (Register 92, No. 40). A Certificate of Compliance must be transmitted to OAL by 2-3-92 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 1-25-93 as an emergency; operative 2-2-93 (Register 93, No. 5). A Certificate of Compliance must be transmitted to OAL 6-2-93 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1-25-93 order transmitted to OAL 5-26-93; disapproved by OAL on 6-22-93 (Register 93, No. 26).
6. New section filed 6-22-93 as an emergency; operative 6-22-93 (Register 93, No. 26). A Certificate of Compliance must be transmitted to OAL 10-20-93 or emergency language will be repealed by operation of law on the following day.
7. Editorial correction of HISTORY 4 (Register 93, No. 26).
8. Certificate of Compliance as to 6-22-93 emergency order including repealer of section transmitted to OAL 9-23-93 and filed 11-3-93 (Register 93, No. 45).

## Article 6. Closure

#### § 18440. Closure Commencement.

(a) The operator of a major or minor waste tire facility shall comply with the requirements of section 18441 of this Article when closing the waste tire facility.

(b) The operator of a major waste tire facility shall submit an updated Closure Plan (Part B), Form CIWMB 504 (10/92) as specified in section 18442 of this Article, at least 120 days prior to the anticipated closure of the site. This time period shall not apply to facilities required to close in accordance with subsection (e).

(c) The operator of a major waste tire facility shall receive approval in writing from the Board of the updated Closure Plan, prior to beginning closure of the site.

(d) Operators of minor waste tire facilities shall receive written approval from the Board concerning the final planned disposition of waste tires prior to commencing closure. Approval shall be based upon the criteria in section 18441(a)(3) of this Article.

(e) The operator of a major or minor waste tire facility shall cease to accept waste tires and shall immediately begin closure of the site in compliance with any closure conditions established in the permit and these regulations, and shall notify the Board in writing upon commencement, after receiving written approval from the Board in accordance with subsections (c) and (d), if:

- (1) The waste tire facility permit expires and renewal of the permit is not applied for, or it is revoked or denied; or
- (2) A Board order to cease operation is issued; or
- (3) The operator is unable to comply with the Articles in this Chapter or Article 5.5 of Chapter 3.

NOTE: Authority cited: Sections 40502, 42820 and 42830, Public Resources Code. Reference: Sections 42821 and 42832, Public Resources Code.

#### HISTORY

1. New section filed 2-10-92 as an emergency; operative 2-10-92 (Register 92, No. 21). A Certificate of Compliance must be transmitted to OAL 6-9-92 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5-29-92 as an emergency; operative 6-8-92 (Register 92, No. 25). A Certificate of Compliance must be transmitted to OAL by 10-6-92 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 9-28-92 as an emergency; operative 10-6-92 (Register 92, No. 40). A Certificate of Compliance must be transmitted to OAL by 2-3-92 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 1-25-93 as an emergency; operative 2-2-93 (Register 93, No. 5). A Certificate of Compliance must be transmitted to OAL 6-2-93 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1-25-93 order transmitted to OAL 5-26-93; disapproved by OAL on 6-22-93 (Register 93, No. 26).
6. New section filed 6-22-93 as an emergency; operative 6-22-93 (Register 93, No. 26). A Certificate of Compliance must be transmitted to OAL 10-20-93 or emergency language will be repealed by operation of law on the following day.

8. Certificate of Compliance as to 6-22-93 emergency order including amendment transmitted to OAL 9-23-93 and filed 11-3-93 (Register 93, No. 45).

### § 18430. Reinstatement of Suspended and Revoked Permits.

NOTE: Authority cited: Sections 40502, 42820 and 42830, Public Resources Code. Reference: Sections 42820, 42830 and 42841, Public Resources Code.

#### HISTORY

1. New section filed 2-10-92 as an emergency; operative 2-10-92 (Register 92, No. 21). A Certificate of Compliance must be transmitted to OAL 6-9-92 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5-29-92 as an emergency; operative 6-8-92 (Register 92, No. 25). A Certificate of Compliance must be transmitted to OAL by 10-6-92 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 9-28-92 as an emergency; operative 10-6-92 (Register 92, No. 40). A Certificate of Compliance must be transmitted to OAL by 2-3-92 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 1-25-93 as an emergency; operative 2-2-93 (Register 93, No. 5). A Certificate of Compliance must be transmitted to OAL 6-2-93 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1-25-93 order transmitted to OAL 5-26-93; disapproved by OAL on 6-22-93 (Register 93, No. 26).
6. New section filed 6-22-93 as an emergency; operative 6-22-93 (Register 93, No. 26). A Certificate of Compliance must be transmitted to OAL 10-20-93 or emergency language will be repealed by operation of law on the following day.
7. Editorial correction of HISTORY 4 (Register 93, No. 26).
8. Certificate of Compliance as to 6-22-93 emergency order including repealer of section transmitted to OAL 9-23-93 and filed 11-3-93 (Register 93, No. 45).

## Article 5. Permit Application

### § 18431. Application.

An application for a new permit or an application for renewal or revision of an existing permit, for a major waste tire facility, shall include items (a) through (h) of this section. An application for a new permit or an application for renewal or revision for a major waste tire facility permit shall include items (a) through (d) and (h) of this section.

(a) A complete form CIWMB 500 "Waste Tire Facilities Permit Application" (10/92), which is incorporated herein by reference. (See Appendix A.)

(b) A completed form CIWMB 501 "Waste Tire Facilities Operation Plan" (10/92) as specified in section 18432 of this Article, which is incorporated herein by reference. (See Appendix A.)

(c) A completed form CIWMB 502 ("Waste Tire Facilities Environmental Information" 10/92) which is incorporated herein by reference. (See Appendix A.)

(d) A completed form CIWMB 503 "Waste Tire Facilities Emergency Response Plan" (10/92) as described in section 18433 of this Article. This form is incorporated herein by reference. (See Appendix A.)

(e) A completed form CIWMB 504 "Waste Tire Facilities Closure Plan" (10/92) as specified in Article 6, section 18442. This form is incorporated herein by reference. (See Appendix A.)

(f) A completed Reduction/Elimination Plan as specified in section 18434 of this Article. This form is incorporated herein by reference.

(g) Financial assurance mechanisms and operating liability as specified in Articles 9 and 10 of this Chapter.

(h) Verification that all required local, state, and federal permits and approvals have been acquired by the applicant.

NOTE: Authority cited: Sections 40502, 42820 and 42830, Public Resources Code. Reference: Sections 21068, 21082.2, 42821 and 42832, Public Resources Code, Sections 15002, 15064 and 15382, State CEQA Guidelines and Sections 65940 and 65941, Government Code.

#### HISTORY

1. New section filed 2-10-92 as an emergency; operative 2-10-92 (Register 92, No. 21). A Certificate of Compliance must be transmitted to OAL 6-9-92 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5-29-92 as an emergency; operative 6-8-92 (Register 92, No. 25). A Certificate of Compliance must be transmitted to OAL by 10-6-92

or emergency language will be repealed by operation of law on the following day.

3. New section refiled 9-28-92 as an emergency; operative 10-6-92 (Register 92, No. 40). A Certificate of Compliance must be transmitted to OAL by 2-3-92 or emergency language will be repealed by operation of law on the following day.

4. New section refiled 1-25-93 as an emergency; operative 2-2-93 (Register 93, No. 5). A Certificate of Compliance must be transmitted to OAL 6-2-93 or emergency language will be repealed by operation of law on the following day.

5. Certificate of Compliance as to 1-25-93 order transmitted to OAL 5-26-93; disapproved by OAL on 6-22-93 (Register 93, No. 26).

6. New section filed 6-22-93 as an emergency; operative 6-22-93 (Register 93, No. 26). A Certificate of Compliance must be transmitted to OAL 10-20-93 or emergency language will be repealed by operation of law on the following day.

7. Editorial correction of HISTORY 4 (Register 93, No. 26).

8. Certificate of Compliance as to 6-22-93 emergency order including amendment transmitted to OAL 9-23-93 and filed 11-3-93 (Register 93, No. 45).

9. Change without regulatory effect amending subsections (a)-(e) filed 4-2-96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 14).

### § 18432. Operation Plan.

(a) The Operation Plan, described in subsection (b), shall demonstrate conformance with the technical standards contained in 14 CCR, Division 30, Chapter 3, Article 5.5.

(b) An Operator of a waste tire facility shall submit a form CIWMB 501 "Waste Tire Facilities Operation Plan" (10/92), which is incorporated herein by reference, as part of the waste tire facility permit application package. (See Appendix A.)

(c) The operator shall file amendments to the Operation Plan whenever necessary to keep the information contained in it current.

NOTE: Authority cited: Sections 40502, 42820 and 42830, Public Resources Code. Reference: Sections 41700, 42821 and 42832, Public Resources Code.

#### HISTORY

1. New section filed 2-10-92 as an emergency; operative 2-10-92 (Register 92, No. 21). A Certificate of Compliance must be transmitted to OAL 6-9-92 or emergency language will be repealed by operation of law on the following day.

2. New section refiled 5-29-92 as an emergency; operative 6-8-92 (Register 92, No. 25). A Certificate of Compliance must be transmitted to OAL by 10-6-92 or emergency language will be repealed by operation of law on the following day.

3. New section refiled 9-28-92 as an emergency; operative 10-6-92 (Register 92, No. 40). A Certificate of Compliance must be transmitted to OAL by 2-3-92 or emergency language will be repealed by operation of law on the following day.

4. New section refiled 1-25-93 as an emergency; operative 2-2-93 (Register 93, No. 5). A Certificate of Compliance must be transmitted to OAL 6-2-93 or emergency language will be repealed by operation of law on the following day.

5. Certificate of Compliance as to 1-25-93 order transmitted to OAL 5-26-93; disapproved by OAL on 6-22-93 (Register 93, No. 26).

6. New section filed 6-22-93 as an emergency; operative 6-22-93 (Register 93, No. 26). A Certificate of Compliance must be transmitted to OAL 10-20-93 or emergency language will be repealed by operation of law on the following day.

7. Editorial correction of HISTORY 4 (Register 93, No. 26).

8. Certificate of Compliance as to 6-22-93 emergency order including repealer and adoption of section transmitted to OAL 9-23-93 and filed 11-3-93 (Register 93, No. 45).

9. Change without regulatory effect amending subsection (b) filed 4-2-96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 14).

### § 18433. Emergency Response Plan.

(a) The operator of a waste tire facility shall submit as part of their application package, a completed form CIWMB 503 "Waste Tire Facilities Emergency Response Plan" (10/92), which is incorporated herein by reference. (See Appendix A.) Concurrently, the Emergency Response Plan shall be submitted to the local fire authority. The operator of the waste tire facility shall maintain a copy of the Emergency Response Plan at the facility. At the time of permit issuance the approved Emergency Response Plan shall be forwarded to the local fire authority by the permittee. The plan shall be revised as necessary to reflect any changes in the operations of the waste tire facility or requirements of the local fire authority. The local fire authority and the Board shall be notified of any changes to the plan within 30 days of the revision.



## Article 9. Financial Assurance Requirements for Closure of a Major Waste Tire Facility

### § 18470. Scope and Applicability.

(a) This Article requires operators of major waste tire facilities to demonstrate adequate financial ability to conduct closure activities.

(b) Operators of all major waste tire facilities, except state and federal operators, shall comply with the requirements of this Article upon application for issuance of a major waste tire facilities permit pursuant to Chapter 6, Article 1, section 18420.

NOTE: Authority cited: Sections 40502 and 42820, Public Resources Code. Reference: Section 42821, Public Resources Code.

#### HISTORY

1. New section filed 2-10-92 as an emergency; operative 2-10-92 (Register 92, No. 21). A Certificate of Compliance must be transmitted to OAL 6-9-92 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5-29-92 as an emergency; operative 6-8-92 (Register 92, No. 25). A Certificate of Compliance must be transmitted to OAL by 10-6-92 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 9-28-92 as an emergency; operative 10-6-92 (Register 92, No. 40). A Certificate of Compliance must be transmitted to OAL by 2-3-92 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 1-25-93 as an emergency; operative 2-2-93 (Register 93, No. 5). A Certificate of Compliance must be transmitted to OAL 6-2-93 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1-25-93 order transmitted to OAL 5-26-93; disapproved by OAL on 6-22-93 (Register 93, No. 26).
6. New section filed 6-22-93 as an emergency; operative 6-22-93 (Register 93, No. 26). A Certificate of Compliance must be transmitted to OAL 10-20-93 or emergency language will be repealed by operation of law on the following day.
7. Editorial correction of HISTORY 4 (Register 93, No. 26).
8. Certificate of Compliance as to 6-22-93 emergency order including repealer and adoption of subsection (a) transmitted to OAL 9-23-93 and filed 11-3-93 (Register 93, No. 45).

### § 18471. Definitions.

(a) When used in this Article, the following terms shall have the meanings given below:

(1) "Current Closure Cost Estimate" means the most recent estimate prepared in accordance with Chapter 6, Article 6, section 18442.

(2) "Depository Trust Fund" means the fund established in conjunction with a surety bond or letter of credit and that meets the requirements of section 18474 of this Article.

(3) "Enterprise Fund" means a fund established to account for the financing of self-supporting activities of a government unit that renders services on a user-fee basis.

(4) "Government Securities" means financial obligations issued by a federal, state or local government, including general obligation bonds, revenue bonds, and certificates of participation.

(5) "Letter of Credit" means a contract by which the issuing institution promises to extend credit on behalf of an operator to the Board or its designee, on presentation of the mechanism in accordance with its terms.

(6) "Provider of financial assurance" means an entity, other than an operator, that provides financial assurance to an operator of a major waste tire facility, including but not limited to a trustee, an institution issuing a letter of credit, or a surety company.

(7) "Surety Bond" means a contract by which a surety company promises that, if the operator fails to perform required closure activities, the surety company will be liable for the operator's responsibilities as specified by the bond.

(8) "Trust fund" means a contract by which the operator transfers assets to a trustee to hold, on behalf of the Board or its designee, to pay closure costs.

NOTE: Authority cited: Sections 40502 and 42820, Public Resources Code. Reference: Section 42821, Public Resources Code.

#### HISTORY

1. New section filed 2-10-92 as an emergency; operative 2-10-92 (Register 92, No. 21). A Certificate of Compliance must be transmitted to OAL 6-9-92 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5-29-92 as an emergency; operative 6-8-92 (Register 92, No. 25). A Certificate of Compliance must be transmitted to OAL by 10-6-92 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 9-28-92 as an emergency; operative 10-6-92 (Register 92, No. 40). A Certificate of Compliance must be transmitted to OAL by 2-3-92 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 1-25-93 as an emergency; operative 2-2-93 (Register 93, No. 5). A Certificate of Compliance must be transmitted to OAL 6-2-93 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1-25-93 order transmitted to OAL 5-26-93; disapproved by OAL on 6-22-93 (Register 93, No. 26).
6. New section filed 6-22-93 as an emergency; operative 6-22-93 (Register 93, No. 26). A Certificate of Compliance must be transmitted to OAL 10-20-93 or emergency language will be repealed by operation of law on the following day.
7. Editorial correction of HISTORY 4 (Register 93, No. 26).
8. Certificate of Compliance as to 6-22-93 emergency order including repealer and adoption of subsections (a)(1)-(2) transmitted to OAL 9-23-93 and filed 11-3-93 (Register 93, No. 45).

### § 18472. Closure Cost Estimate Adjustments.

(a) An operator shall increase the closure cost estimate when changes to the closure plan increase the cost of closure.

(b) An operator may reduce the closure cost estimate when changes to the closure plan decrease the cost of closure. The request for reduction shall be submitted with an application for renewal or revision of the permit for approval by the Board or its designee.

(c) Each year, an operator shall submit to the Board or its designee, a report calculating the increase in the closure cost estimate due to the inflation factor for the previous calendar year.

The inflation factor is derived from the annual Implicit Price Deflator for Gross National Product as published annually by the U.S. Department of Commerce, in its Survey of Current Business. The inflation factor is the result of dividing the latest annual published deflator by the deflator for the previous year. The operator shall adjust the closure cost estimate for inflation within 60 days of the anniversary date of the establishment of the financial mechanism for closure costs. The operator shall increase the monetary amount of the financial mechanism based on this inflation factor.

(d) The mechanism(s) used to demonstrate financial responsibility shall be updated, no more than 60 days after a change in the amount of the current closure cost estimate covered by the mechanism(s).

NOTE: Authority cited: Sections 40502 and 42820, Public Resources Code. Reference: Section 42821, Public Resources Code.

#### HISTORY

1. New section filed 2-10-92 as an emergency; operative 2-10-92 (Register 92, No. 21). A Certificate of Compliance must be transmitted to OAL 6-9-92 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5-29-92 as an emergency; operative 6-8-92 (Register 92, No. 25). A Certificate of Compliance must be transmitted to OAL by 10-6-92 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 9-28-92 as an emergency; operative 10-6-92 (Register 92, No. 40). A Certificate of Compliance must be transmitted to OAL by 2-3-92 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 1-25-93 as an emergency; operative 2-2-93 (Register 93, No. 5). A Certificate of Compliance must be transmitted to OAL 6-2-93 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1-25-93 order transmitted to OAL 5-26-93; disapproved by OAL on 6-22-93 (Register 93, No. 26).
6. New section filed 6-22-93 as an emergency; operative 6-22-93 (Register 93, No. 26). A Certificate of Compliance must be transmitted to OAL 10-20-93 or emergency language will be repealed by operation of law on the following day.
7. Editorial correction of HISTORY 4 (Register 93, No. 26).

8. Certificate of Compliance as to 6-22-93 emergency order including amendment of section heading and text transmitted to OAL 9-23-93 and filed 11-3-93 (Register 93, No. 45).

$$\text{Next Payment} = \frac{(\text{CE} - \text{CV})}{Y}$$

### § 18473. Acceptable Mechanisms and Combination of Mechanisms.

(a) Subject to the limitation of section (c) of this section, an operator shall use any one or any combination of the mechanisms specified which are defined in the following sections of this Article:

- (1) Section 18474. Trust Fund
- (2) Section 18475. Surety Bond
- (3) Section 18476. Letter of Credit
- (4) Section 18477. Government Securities
- (5) Section 18478. Enterprise Fund

(b) If a combination of mechanisms are used, the operator shall designate one mechanism as "primary" and all others as "excess" coverage.

(c) If an operator uses a trust fund in combination with a surety bond or letter of credit, the trust fund may be used as the depository trust fund for the other mechanisms.

(d) An operator shall not combine a performance bond with any other mechanism(s).

NOTE: Authority cited: Sections 40502 and 42820, Public Resources Code. Reference: Section 42821, Public Resources Code.

#### HISTORY

1. New section filed 2-10-92 as an emergency; operative 2-10-92 (Register 92, No. 21). A Certificate of Compliance must be transmitted to OAL 6-9-92 or emergency language will be repealed by operation of law on the following day.
2. New section filed 5-29-92 as an emergency; operative 6-8-92 (Register 92, No. 25). A Certificate of Compliance must be transmitted to OAL by 10-6-92 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 9-28-92 as an emergency; operative 10-6-92 (Register 92, No. 40). A Certificate of Compliance must be transmitted to OAL by 2-3-92 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 1-25-93 as an emergency; operative 2-2-93 (Register 93, No. 5). A Certificate of Compliance must be transmitted to OAL 6-2-93 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1-25-93 order transmitted to OAL 5-26-93; disapproved by OAL on 6-22-93 (Register 93, No. 26).
6. New section filed 6-22-93 as an emergency; operative 6-22-93 (Register 93, No. 26). A Certificate of Compliance must be transmitted to OAL 10-20-93 or emergency language will be repealed by operation of law on the following day.
7. Editorial correction of HISTORY 4 (Register 93, No. 26).
8. Certificate of Compliance as to 6-22-93 emergency order transmitted to OAL 9-23-93 and filed 11-3-93 (Register 93, No. 45).

### § 18474. Trust Fund.

(a) An operator may establish a trust fund to meet the requirements of this Article. The trust agreement shall be submitted to the Board or its designee as an originally signed duplicate. The trustee shall be an entity which has the authority to act as a trustee, and whose trust operations are regulated and examined by a federal or state agency.

(b) The trust agreement shall be worded as specified by using form CIWMB 140 "Trust Agreement" (12/91) which is incorporated herein by reference; and also shall contain original signature of grantor and trustee. (See Appendix A.)

(c) Payments into the trust fund shall be made annually by the operator over the five year period beginning with the establishment of the trust fund. This period hereafter is referred to as the "pay-in period". Payments into the closure trust fund shall be made according to the following:

(1) The first payment shall be at least equal to the current closure cost estimate, divided by the number of years in the pay-in period. Subsequent payments shall be made no later than 30 days after each anniversary date of the first payment. The amount of each subsequent payment shall be determined by this formula:

where CE is the current closure cost estimate. CV is the current value of the trust fund and Y is the number of years remaining in the pay-in period.

(d) Before beginning final closure, the value of the trust fund shall equal the amount of the current closure cost estimate. If the value of the fund is less than the amount of the current estimate, the operator shall either deposit an amount into the fund so that the value of the fund at least equals the amount of the current closure cost estimate, or obtain other financial assurance, as specified in this Article, to cover the difference.

(e) If at any time, the value of the trust fund is greater than the required amount of coverage minus the amount of coverage demonstrated by other mechanisms, the operator may request in writing that the Board or its designee authorize the release of the excess funds. After receiving such a request, the Board or its designee shall review the request and, if any excess funds are verified, shall instruct the trustee to release the funds.

(f) After the Board or its designee has approved final closure, an operator or any other person authorized by the Board to perform closure, may request reimbursement for closure expenditures by submitting to the Board for review, documentation of those expenditures, including but not limited to tire receipts. After receiving the documentation for closure activities, the Board or its designee shall determine whether the closure expenditures are in accordance with the closure plan or otherwise justified. After the Board or its designee has approved final closure, the Board or its designee shall instruct the trustee, in writing, to reimburse the fund to the grantor.

(g) The Board or its designee shall agree to termination of the trust when:

(1) An operator substitutes alternate financial assurance as specified in section 18479 of this Article; or

(2) The Board or its designee releases the operator from the requirements of this Article in accordance with section 18482.

NOTE: Authority cited: Sections 40502 and 42820, Public Resources Code. Reference: Section 42821, Public Resources Code.

#### HISTORY

1. New section filed 2-10-92 as an emergency; operative 2-10-92 (Register 92, No. 21). A Certificate of Compliance must be transmitted to OAL 6-9-92 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5-29-92 as an emergency; operative 6-8-92 (Register 92, No. 25). A Certificate of Compliance must be transmitted to OAL by 10-6-92 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 9-28-92 as an emergency; operative 10-6-92 (Register 92, No. 40). A Certificate of Compliance must be transmitted to OAL by 2-3-92 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 1-25-93 as an emergency; operative 2-2-93 (Register 93, No. 5). A Certificate of Compliance must be transmitted to OAL 6-2-93 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1-25-93 order transmitted to OAL 5-26-93; disapproved by OAL on 6-22-93 (Register 93, No. 26).
6. New section filed 6-22-93 as an emergency; operative 6-22-93 (Register 93, No. 26). A Certificate of Compliance must be transmitted to OAL 10-20-93 or emergency language will be repealed by operation of law on the following day.
7. Editorial correction of HISTORY 4 (Register 93, No. 26).
8. Certificate of Compliance as to 6-22-93 emergency order including repealer and adoption of subsection (b) and amendment of subsections (e) and (f) transmitted to OAL 9-23-93 and filed 11-3-93 (Register 93, No. 45).
9. Change without regulatory effect amending subsection (b) filed 4-2-96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 14).

### § 18475. Surety Bond.

(a) An operator may establish a surety bond to meet the requirements of this Article. The surety company issuing the bond shall, at a minimum, be among those listed as acceptable sureties on federal bonds in the most recent issuance of Circular 570 of the U.S. Department of the Treasury.

(b) The surety bond shall be worded as specified by using one of the following forms which are incorporated by reference:

1-113

(1) Form CIWMB 141 (1/92) "Performance Bond," which is incorporated herein by reference, for a surety bond guaranteeing performance (See Appendix A.); or

(2) Form CIWMB 142 (1/92) "Financial Guarantee Bond", which is incorporated herein by reference, for a surety bond guaranteeing payment. (See Appendix A.)

(c) An operator who uses a surety bond to satisfy the requirements of this Article, or the surety who issues the bond, shall also establish a depository trust fund which meets the requirements of section 18474 of this Article if:

(1) An operator fails to demonstrate alternate financial assurance within 60 days after receiving notice of cancellation of the mechanism;

(2) An operator fails to perform closure in accordance with the applicable approved closure plan and permit requirements when required to do so by the Board or its designee; or

(3) A surety fails to perform such activities on behalf of the operator. This applies to the performance bond only.

(d) Under the terms of the bond, all payments made from the bond shall be deposited by the surety directly into the depository trust fund.

(e) A surety company shall become liable under the terms of the bond, if the Board or its designee determines that the operator has failed to perform closure as guaranteed by the bond.

(f) Under the terms of the bond, a surety may cancel the bond by sending notice of cancellation by certified mail to the operator and the Board or its designee. Cancellation shall not take effect until 120 days after the date of receipt of the notice of cancellation by both the operator and the Board or its designee, as evidenced by the return receipts.

(g) An operator may cancel a bond by sending written notice to the Surety(ies), provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization from the Board or its designee to terminate the bond.

NOTE: Authority cited: Sections 40502 and 42820, Public Resources Code. Reference: Section 42821, Public Resources Code.

#### HISTORY

1. New section filed 2-10-92 as an emergency; operative 2-10-92 (Register 92, No. 21). A Certificate of Compliance must be transmitted to OAL 6-9-92 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5-29-92 as an emergency; operative 6-8-92 (Register 92, No. 25). A Certificate of Compliance must be transmitted to OAL by 10-6-92 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 9-28-92 as an emergency; operative 10-6-92 (Register 92, No. 40). A Certificate of Compliance must be transmitted to OAL by 2-3-92 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 1-25-93 as an emergency; operative 2-2-93 (Register 93, No. 5). A Certificate of Compliance must be transmitted to OAL 6-2-93 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1-25-93 order transmitted to OAL 5-26-93; disapproved by OAL on 6-22-93 (Register 93, No. 26).
6. New section filed 6-22-93 as an emergency; operative 6-22-93 (Register 93, No. 26). A Certificate of Compliance must be transmitted to OAL 10-20-93 or emergency language will be repealed by operation of law on the following day.
7. Editorial correction of HISTORY 4 (Register 93, No. 26).
8. Certificate of Compliance as to 6-22-93 emergency order including amendment of subsection (f) transmitted to OAL 9-23-93 and filed 11-3-93 (Register 93, No. 45).
9. Change without regulatory effect amending subsections (b)(1)-(2) filed 4-2-96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 14).

#### § 18476. Letter of Credit.

(a) An operator may establish a letter of credit to meet the requirements of this section. The issuing institution shall be an entity which has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a federal or state agency.

(b) The letter of credit shall be worded as specified by using form CIWMB 143 "Irrevocable Letter of Credit for Closure Costs" (12/91) which is incorporated herein by reference. (See Appendix A.)

(c) The letter of credit shall be accompanied by a letter from the operator identifying the number, issuing institution, and date of issuance of the letter of credit; and the name, address, facility number, and amount of funds assured by the letter of credit for closure for each major waste tire facility.

(d) An operator who uses a letter of credit to satisfy the requirements of this Article or the issuing institution shall also establish a depository trust fund which meets the requirements of section 18474 of this Article if:

(1) An operator fails to demonstrate alternate financial assurance within 60 days after receiving notice of cancellation of the mechanism; or

(2) An operator fails to perform closure in accordance with the applicable approved closure plan and permit requirements when required to do so by the Board or its designee.

(e) Under the terms of the letter of credit, all payments made from the letter of credit shall be deposited by the financial institution issuing the letter of credit, directly into the depository trust fund.

(f) The letter of credit shall:

(1) Be irrevocable and issued for a period of at least one year; and

(2) Provide that the expiration date will be automatically extended for a period of at least one year unless, at least 120 days before the current expiration date, the issuing institution notifies both the operator and the Board or its designee by certified mail of a decision not to extend the expiration date. Under the terms of the letter of credit, the 120 days shall begin on the date when both the operator and the Board or its designee have received the notice, as evidenced by the return receipts.

NOTE: Authority cited: Sections 40502 and 42820, Public Resources Code. Reference: Section 42821, Public Resources Code.

#### HISTORY

1. New section filed 2-10-92 as an emergency; operative 2-10-92 (Register 92, No. 21). A Certificate of Compliance must be transmitted to OAL 6-9-92 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5-29-92 as an emergency; operative 6-8-92 (Register 92, No. 25). A Certificate of Compliance must be transmitted to OAL by 10-6-92 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 9-28-92 as an emergency; operative 10-6-92 (Register 92, No. 40). A Certificate of Compliance must be transmitted to OAL by 2-3-92 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 1-25-93 as an emergency; operative 2-2-93 (Register 93, No. 5). A Certificate of Compliance must be transmitted to OAL 6-2-93 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1-25-93 order transmitted to OAL 5-26-93; disapproved by OAL on 6-22-93 (Register 93, No. 26).
6. New section filed 6-22-93 as an emergency; operative 6-22-93 (Register 93, No. 26). A Certificate of Compliance must be transmitted to OAL 10-20-93 or emergency language will be repealed by operation of law on the following day.
7. Editorial correction of HISTORY 4 (Register 93, No. 26).
8. Certificate of Compliance as to 6-22-93 emergency order including repealer and adoption of subsection (c), adoption of subsection (d), and relettering of former subsection (d) to (e), and relettering of former subsection (e) to (f) transmitted to OAL 9-23-93 and filed 11-3-93 (Register 93, No. 45).
9. Change without regulatory effect amending subsection (b) filed 4-2-96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 14).

#### § 18477. Government Securities.

(a) Government securities may be used to cover closure costs only for major waste tire facilities operated by government agencies.

(b) The terms of issuance of government securities shall specify that proceeds from the sale of the securities shall be deposited into a financial assurance mechanism that meets the requirements of Section 18478(d) of this Article.

(c) The securities shall have been issued and the proceeds deposited into the financial assurance mechanism that provides equivalent protection to a trust fund by meeting the following requirements:

(1) Proceeds from the sale of securities shall be used exclusively to pay for closure activities:

1-114

(2) The financial operations of the provider of the financial assurance are regulated by a federal or state agency, or the provider is otherwise certain to maintain and disburse the assured funds properly;

(3) If the provider of financial assurance has authority to invest revenue deposited into the mechanism, the provider shall exercise investment discretion similar to a trustee; and

(4) The mechanism meets other requirements that the Board determines are necessary to ensure that the assured funds shall be available in a timely manner.

NOTE: Authority cited: Sections 40502 and 42820, Public Resources Code. Reference: Section 42821, Public Resources Code.

#### HISTORY

1. New section filed 2-10-92 as an emergency; operative 2-10-92 (Register 92, No. 21). A Certificate of Compliance must be transmitted to OAL 6-9-92 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5-29-92 as an emergency; operative 6-8-92 (Register 92, No. 25). A Certificate of Compliance must be transmitted to OAL by 10-6-92 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 9-28-92 as an emergency; operative 10-6-92 (Register 92, No. 40). A Certificate of Compliance must be transmitted to OAL by 2-3-92 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 1-25-93 as an emergency; operative 2-2-93 (Register 93, No. 5). A Certificate of Compliance must be transmitted to OAL 6-2-93 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1-25-93 order transmitted to OAL 5-26-93; disapproved by OAL on 6-22-93 (Register 93, No. 26).
6. New section filed 6-22-93 as an emergency; operative 6-22-93 (Register 93, No. 26). A Certificate of Compliance must be transmitted to OAL 10-20-93 or emergency language will be repealed by operation of law on the following day.
7. Editorial correction of HISTORY 4 (Register 93, No. 26).
8. Certificate of Compliance as to 6-22-93 emergency order including repealer and adoption of subsections (a)-(c) transmitted to OAL 9-23-93 and filed 11-3-93 (Register 93, No. 45).

#### 18478. Enterprise Fund.

(a) The enterprise fund may be used to cover closure costs only for major waste tire facilities operated by government agencies.

(b) The enterprise fund shall dedicate its revenue exclusively or with exclusive first priority to financing closure activities.

(c) The enterprise fund shall be established and the documents shall be worded as specified by using form CIWMB 144 "Enterprise Fund for Financial Assurances" (3/92), which is incorporated herein by reference. (See Appendix A.) The wording, however, may be modified to accommodate special circumstances on a case-by-case basis, as approved by the Board or its designee.

(d) Revenue generated by an enterprise fund shall be deposited into a financial assurance mechanism which:

(1) Provides equivalent protection to a trust fund as described in section 18474 of this Article;

(2) Shall be funded within five years as described in Section 18474 of this Article;

(3) Is used exclusively to finance closure activities and shall remain inviolate against all other claims, including any claims by the operator, the operator's governing body, and the creditors of the operator and its governing body;

(4) Authorizes the Board or its designee to direct the provider of financial assurance to pay closure costs if the Board or its designee determines that the operator has failed to perform closure activities covered by the mechanism;

(5) Is maintained by a provider whose financial operations are regulated by a federal or state agency, or the provider is otherwise certain to maintain and disburse the assured funds properly;

(6) Is maintained by a provider who has authority to invest revenue deposited into the mechanism.

(7) Meets other requirements that the Board determines are necessary to ensure that the assured amount of funds shall be available for closure activities in a timely manner.

NOTE: Authority cited: Sections 40502 and 42820, Public Resources Code. Reference: Section 42821, Public Resources Code.

#### HISTORY

1. New section filed 2-10-92 as an emergency; operative 2-10-92 (Register 92, No. 21). A Certificate of Compliance must be transmitted to OAL 6-9-92 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5-29-92 as an emergency; operative 6-8-92 (Register 92, No. 25). A Certificate of Compliance must be transmitted to OAL by 10-6-92 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 9-28-92 as an emergency; operative 10-6-92 (Register 92, No. 40). A Certificate of Compliance must be transmitted to OAL by 2-3-92 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 1-25-93 as an emergency; operative 2-2-93 (Register 93, No. 5). A Certificate of Compliance must be transmitted to OAL 6-2-93 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1-25-93 order transmitted to OAL 5-26-93; disapproved by OAL on 6-22-93 (Register 93, No. 26).
6. New section filed 6-22-93 as an emergency; operative 6-22-93 (Register 93, No. 26). A Certificate of Compliance must be transmitted to OAL 10-20-93 or emergency language will be repealed by operation of law on the following day.
7. Editorial correction of HISTORY 4 (Register 93, No. 26).
8. Certificate of Compliance as to 6-22-93 emergency order including amendments transmitted to OAL 9-23-93 and filed 11-3-93 (Register 93, No. 45).
9. Change without regulatory effect amending subsection (c) filed 4-2-96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 14).

#### § 18479. Substitution of Mechanisms by Operator.

(a) An operator may substitute any alternate financial assurance mechanism(s) acceptable to the Board or its designee as specified in this Article, provided that at all times the operator maintains an effective mechanism or combination of mechanisms that satisfies the requirements of section 18473 of this Article, and informs the Board of such substitution.

(b) After obtaining alternate financial assurance, an operator may request that the Board or its designee terminate or authorize the termination of a financial assurance mechanism. The operator shall submit such a request in writing with evidence of alternate financial assurance.

(c) Following written approval by the Board or its designee, the operator may cancel a financial assurance mechanism by giving notice to the provider of financial assurance.

NOTE: Authority cited: Sections 40502 and 42820, Public Resources Code. Reference: Section 42821, Public Resources Code.

#### HISTORY

1. New section filed 2-10-92 as an emergency; operative 2-10-92 (Register 92, No. 21). A Certificate of Compliance must be transmitted to OAL 6-9-92 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5-29-92 as an emergency; operative 6-8-92 (Register 92, No. 25). A Certificate of Compliance must be transmitted to OAL by 10-6-92 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 9-28-92 as an emergency; operative 10-6-92 (Register 92, No. 40). A Certificate of Compliance must be transmitted to OAL by 2-3-92 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 1-25-93 as an emergency; operative 2-2-93 (Register 93, No. 5). A Certificate of Compliance must be transmitted to OAL 6-2-93 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1-25-93 order transmitted to OAL 5-26-93; disapproved by OAL on 6-22-93 (Register 93, No. 26).
6. New section filed 6-22-93 as an emergency; operative 6-22-93 (Register 93, No. 26). A Certificate of Compliance must be transmitted to OAL 10-20-93 or emergency language will be repealed by operation of law on the following day.
7. Editorial correction of HISTORY 4 (Register 93, No. 26).
8. Certificate of Compliance as to 6-22-93 emergency order transmitted to OAL 9-23-93 and filed 11-3-93 (Register 93, No. 45).

#### § 18480. Bankruptcy or Other Incapacity of an Operator or Provider of Financial Assurance.

(a) Within 10 days after commencement of a voluntary or involuntary proceeding under the Bankruptcy Code, Title 11, U.S.C. sections 101-1330 in which:

(1) The operator is named as debtor. The operator shall notify the Board or its designee by certified mail of such commencement. 1-115



(2) A provider of financial assurance is named as debtor, such provider shall notify the operator and the Board or its designee by certified mail of such commencement.

(b) An operator shall be deemed to be without the financial assurances in the event of bankruptcy of its provider, or in the event of a suspension or revocation of the authority of the provider to issue such coverage. If such an event occurs, the operator shall demonstrate, to the Board or its designee, alternate coverage as specified in this Article within 60 days after receiving notice of the event. If the operator fails to obtain alternate coverage within 60 days, the operator shall notify the Board or its designee within 10 days of such failure.

NOTE: Authority cited: Sections 40502 and 42820, Public Resources Code. Reference: Section 42821, Public Resources Code.

#### HISTORY

1. New section filed 2-10-92 as an emergency; operative 2-10-92 (Register 92, No. 21). A Certificate of Compliance must be transmitted to OAL 6-9-92 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5-29-92 as an emergency; operative 6-8-92 (Register 92, No. 25). A Certificate of Compliance must be transmitted to OAL by 10-6-92 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 9-28-92 as an emergency; operative 10-6-92 (Register 92, No. 40). A Certificate of Compliance must be transmitted to OAL by 2-3-92 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 1-25-93 as an emergency; operative 2-2-93 (Register 93, No. 5). A Certificate of Compliance must be transmitted to OAL 6-2-93 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1-25-93 order transmitted to OAL 5-26-93; disapproved by OAL on 6-22-93 (Register 93, No. 26).
6. New section filed 6-22-93 as an emergency; operative 6-22-93 (Register 93, No. 26). A Certificate of Compliance must be transmitted to OAL 10-20-93 or emergency language will be repealed by operation of law on the following day.
7. Editorial correction of HISTORY 4 (Register 93, No. 26).
8. Certificate of Compliance as to 6-22-93 emergency order including amendment of section heading and subsection (a)(1) transmitted to OAL 9-23-93 and filed 11-3-93 (Register 93, No. 45).

#### § 18481. Recordkeeping and Reporting Requirements.

(a) An operator shall maintain evidence of all financial assurance mechanisms until the operator is released from the requirements of this Article, as specified in section 18482. This evidence shall be maintained at each major waste tire facility, whenever possible, or at an alternate, designated location approved by the Board or its designee and which is accessible to the operator, and available for the Board or its designee to review.

(b) An operator shall maintain the following types of evidence of financial assurance:

(1) Trust Fund. An operator using a trust fund shall maintain a copy of the trust agreement and statements verifying the current balance of the fund.

(2) Surety Bond. An operator using a surety bond shall maintain a copy of the bond and any amendments to the bond.

(3) Letter of Credit. An operator using a letter of credit shall maintain a copy of the letter of credit and any amendments to the letter of credit.

(4) Government Securities. An operator using government securities shall maintain a copy of the following:

(A) All official resolutions, forms, letters or other pertinent documents generated to issue the securities;

(B) The terms of issuance of the securities; and

(C) With respect to the financial assurance mechanism into which proceeds from the issuance are deposited, the information listed in subsection (5)(C)1., 2., and 3. of this section.

(5) Enterprise Fund. An operator using an enterprise fund shall maintain a copy of the following:

(A) All official resolutions, forms, letters, or other pertinent documents generated to establish the fund;

(B) The annual financial statements of the fund; and

(C) With respect to the financial assurance mechanism into which enterprise fund revenue is deposited:

1. The mechanism, which shall identify the major waste tire facility(ies) and the current closure cost estimates covered by the mechanism;

2. A letter from an authorized officer of the institution maintaining the mechanism, identifying the amount of coverage provided by the mechanism as of the date of its establishment and each anniversary date of establishment; and

3. Documentation that the mechanism meets the requirements of section 18478(d) of this Article.

(c) An operator shall submit current evidence of financial responsibility, as described in subsection (b) of this section, to the Board or its designee:

(1) Whenever a financial assurance mechanism is established or amended.

(A) In the case of a trust fund, letter of credit or surety bond, such documentation shall include the original mechanisms or amendments;

(B) In the case of government securities such documentation shall include the information as specified in subsection (b)(4)(C) of this section.

(C) In the case of the enterprise fund such documentation shall include the information as specified in subsection (b)(5)(C) of this section.

(2) When a closure plan is required to be submitted as required in Article 6, or when the amendment of a cost estimate is required to be submitted as required in Articles 6 or 9; or

(3) If an operator fails to increase the balance of a trust fund or an enterprise fund in accordance with section 18474(c) of this Article.

NOTE: Authority cited: Sections 40502 and 42820, Public Resources Code. Reference: Section 42821, Public Resources Code.

#### HISTORY

1. New section filed 2-10-92 as an emergency; operative 2-10-92 (Register 92, No. 21). A Certificate of Compliance must be transmitted to OAL 6-9-92 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5-29-92 as an emergency; operative 6-8-92 (Register 92, No. 25). A Certificate of Compliance must be transmitted to OAL by 10-6-92 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 9-28-92 as an emergency; operative 10-6-92 (Register 92, No. 40). A Certificate of Compliance must be transmitted to OAL by 2-3-92 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 1-25-93 as an emergency; operative 2-2-93 (Register 93, No. 5). A Certificate of Compliance must be transmitted to OAL 6-2-93 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1-25-93 order transmitted to OAL 5-26-93; disapproved by OAL on 6-22-93 (Register 93, No. 26).
6. New section filed 6-22-93 as an emergency; operative 6-22-93 (Register 93, No. 26). A Certificate of Compliance must be transmitted to OAL 10-20-93 or emergency language will be repealed by operation of law on the following day.
7. Editorial correction of HISTORY 4 (Register 93, No. 26).
8. Certificate of Compliance as to 6-22-93 emergency order including amendment of subsections (b)(5)(C)2. and (c)(2) transmitted to OAL 9-23-93 and filed 11-3-93 (Register 93, No. 45).

#### § 18482. Release from Financial Assurance Requirements for Closure Costs.

(a) After approving the closure of a major waste tire facility as specified in Article 6 of Chapter 6, the Board or its designee shall notify the operator in writing, that the operator is no longer required by this Article to maintain financial assurance for closure of a particular facility; or

(b) When operational control of a major waste tire facility is transferred, the existing operator shall remain subject to the requirements of this Article until the new operator provides acceptable financial assurances to the Board or its designee. The Board or its designee shall notify the previous operator in writing that they are no longer required to maintain financial assurance for closure of that particular facility.

NOTE: Authority cited: Sections 40502 and 42820, Public Resources Code. Reference: Section 42821, Public Resources Code.

#### HISTORY

1. New section filed 2-10-92 as an emergency; operative 2-10-92 (Register 92, No. 21). A Certificate of Compliance must be transmitted to OAL 6-9-92 or emergency language will be repealed by operation of law on the following day.



2. New section refiled 5-29-92 as an emergency; operative 6-8-92 (Register 92, No. 25). A Certificate of Compliance must be transmitted to OAL by 10-6-92 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 9-28-92 as an emergency; operative 10-6-92 (Register 92, No. 40). A Certificate of Compliance must be transmitted to OAL by 2-3-93 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 1-25-93 as an emergency; operative 2-2-93 (Register 93, No. 5). A Certificate of Compliance must be transmitted to OAL 6-2-93 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1-25-93 order transmitted to OAL 5-26-93; disapproved by OAL on 6-22-93 (Register 93, No. 26).
6. New section filed 6-22-93 as an emergency; operative 6-22-93 (Register 93, No. 26). A Certificate of Compliance must be transmitted to OAL 10-20-93 or emergency language will be repealed by operation of law on the following day.
7. Editorial correction of HISTORY 4 (Register 93, No. 26).
8. Certificate of Compliance as to 6-22-93 emergency order including amendment of subsection (a) and repealer and adoption of forms transmitted to OAL 9-23-93 and filed 11-3-93 (Register 93, No. 45).
9. Change without regulatory effect moving forms to section 18831, appendix A filed 4-2-96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 14).

## Article 10. Financial Responsibility for Operating Liability Claims of Major Waste Tire Facilities

### § 18485. Scope and Applicability.

(a) This Article requires operators of major waste tire facilities to demonstrate adequate financial ability to compensate third parties for bodily injury and property damage caused by facility operation.

(b) Operators of all major waste tire facilities, except state and federal operators, shall comply with the requirements of this Article upon application for issuance of a major waste tire facilities permit pursuant to Chapter 6, Article 1, section 18420.

(NOTE: Authority cited: Sections 40502 and 42820, Public Resources Code. Reference: Section 42821, Public Resources Code.)

#### HISTORY

1. New section filed 2-10-92 as an emergency; operative 2-10-92 (Register 92, No. 21). A Certificate of Compliance must be transmitted to OAL 6-9-92 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 5-29-92 as an emergency; operative 6-8-92 (Register 92, No. 25). A Certificate of Compliance must be transmitted to OAL by 10-6-92 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 9-28-92 as an emergency; operative 10-6-92 (Register 92, No. 40). A Certificate of Compliance must be transmitted to OAL by 2-3-93 or emergency language will be repealed by operation of law on the following day.
4. Editorial correction of printing error in article heading (Register 92, No. 40).
5. New section refiled 1-25-93 as an emergency; operative 2-2-93 (Register 93, No. 5). A Certificate of Compliance must be transmitted to OAL 6-2-93 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 1-25-93 order transmitted to OAL 5-26-93; disapproved by OAL on 6-22-93 (Register 93, No. 26).
7. New section filed 6-22-93 as an emergency; operative 6-22-93 (Register 93, No. 26). A Certificate of Compliance must be transmitted to OAL 10-20-93 or emergency language will be repealed by operation of law on the following day.
8. Editorial correction of HISTORY 5 (Register 93, No. 26).
9. Certificate of Compliance as to 6-22-93 emergency order including amendment of subsection (a) transmitted to OAL 9-23-93 and filed 11-3-93 (Register 93, No. 45).

### § 18486. Definitions.

(a) When used in this Article, the following terms shall have the meanings described in Chapter 5, Article 3.5, section 18281:

- (1) "Assets";
- (2) "Current assets";
- (3) "Current liabilities";
- (4) "Financial reporting year";

(5) "Liabilities";

(6) "Net working capital";

(7) "Net worth";

(8) "Parent corporation"; and

(9) "Tangible net worth".

(b) When used in this Article, the following terms shall have the meanings given below:

(1) "Accidental occurrence" means an event which occurs during the operation of a major waste tire facility prior to closure, that results in bodily injury and/or property damage, and includes continuous or repeated exposure to conditions, neither expected nor intended from the standpoint of the facility operator.

(2) "Admitted carrier" means an insurance company entitled to transact the business of insurance in this state, having complied with the laws imposing conditions precedent to transactions of such business.

(3) "Auto" means a land motor vehicle, trailer or semitrailer designed for travel on public roads, including any attached machinery or equipment. But "auto" does not include "mobile equipment."

(4) "Bodily injury" means any injury to the body, sickness or disease sustained by a person, including death resulting from any of these at any time. Damages because of "bodily injury" include damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury." "Bodily injury" excludes:

(A) "Bodily injury" expected or intended from the standpoint of the operator. This exclusion does not apply to "bodily injury" resulting from the use of reasonable force to protect persons or property.

(B) "Bodily injury" for which the operator is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the operator would have in the absence of the contract or agreement.

(C) Any obligation of the operator under a workers compensation, disability benefits or unemployment compensation law or any similar law.

(D) "Bodily injury" to:

1. An employee of the operator arising out of and in the course of employment by the operator; or
2. The spouse, child, parent, brother or sister of that employee as a consequence of subsection (b)(4)(D)1 above.

This exclusion applies:

1. Whether the operator may be liable as an employer or in any other capacity; and
2. To any obligation to share damages with or repay someone else who must pay damages because of the injury.

(E) "Bodily injury" arising out of the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft owned or operated by or rented or loaned to any operator. Use includes operation and loading or unloading. This exclusion does not apply to:

1. Parking an "auto" on, or on the ways next to, premises the operator owns or rents, provided the "auto" is not owned by or rented or loaned to the operator.

2. "Bodily injury" arising out of the operation of any of the equipment listed in paragraph (F)2 or (F)3 of the definition of "mobile equipment", found in subsection 12 below.

(5) "Corporate guarantee" means a contract meeting the requirements of section 18494 of this Article through which a guarantor promises that, if an operator fails to pay a claim by a third party for bodily injury and/or property damage caused by an accidental occurrence, the guarantor shall pay the claim on behalf of the operator.

(6) "Excess coverage" means assurance for third party bodily injury and property damage costs that are above a specified level (i.e., above the primary coverage level or a limit of lower excess coverage) but up to a specified limit.

(7) "Financial means test" means the financial assurance mechanism specified in section 18493 of this Article by which an operator demonstrates his or her ability to pay third party claims for bodily injury and

1-17

